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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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BRADLEY WARREN and PAULA GAY WARREN,

Plaintiffs,

v.

JOHNSON MATTHEY, INC., BISHOP TUBE CO.,
WHITTAKER CORP., CHRISTIANA METALS
CORP., CENTRAL AND WESTERN CHESTER
COUNTY INDUSTRIAL DEVELOPMENT
AUTHORITY, ELECTRALLOY CORP.,
MARCEGAGLIA, S.P.A., MARCEGAGLIA USA, INC.,
CONSTITUTION DRIVE PARTNERS, L.P. and
SONOBOND ULTRASONICS, INC.,

Defendants.

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Plaintiffs Bradley Warren and Paula Gay Warren, by their attorneys Harriton & Furrer, LLP,
as and for their Complaint herein, alleges as follows:

I. Jurisdiction

1. This Court also has jurisdiction pursuant to 28 U.S.C. §1331 and 42 U.S.C. §§9613 and 6972.
2. This Court has ancillary and/or pendent jurisdiction over Plaintiffs' state law claims.

FILED

AUG 12 2015

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

Civil Action

No.: 15-cv-1919 (GJP)

First Amended
Complaint with Jury Demand

3. Venue is proper in this District pursuant to 28 U.S.C. §1391 and 42 U.S.C. §9613(b) because a substantial part of the events giving rise to the claims occurred in this District.

4. The controversies in this case are justiciable, capable of disposition and Plaintiffs have a personal stake in the outcome.

II. Interested Parties

5. Bradley Warren is an individual who resides at and owns the property located at 54 Conestoga Road in Malvern, Pennsylvania.

6. Paula Gay Warren is an individual who resides at and owns the property located at 54 Conestoga Road in Malvern, Pennsylvania.

7. Bradley Warren and Paula Gay Warren are married.

8. Upon information and belief, Johnson Matthey, Inc. ("Johnson Matthey") is a Pennsylvania corporation authorized to do and doing business in the Commonwealth of Pennsylvania at all relevant times.

9. Upon information and belief, Bishop Tube Company ("Bishop Tube Company") is a Pennsylvania corporation authorized to do and doing business in the Commonwealth of Pennsylvania at all relevant times.

10. Upon information and belief, Whittaker Corporation ("Whittaker") is a California corporation authorized to do and doing business in the Commonwealth of Pennsylvania at all relevant times.

11. Upon information and belief, Christiana Metals Corporation ("Christiana Metals") is a Pennsylvania corporation authorized to do and doing business in the Commonwealth of Pennsylvania at all relevant times.

12. Upon information and belief, the Central and Western Chester County Industrial Development Authority ("CWCCIDA") is a Pennsylvania municipal authority authorized to do and doing business in the Commonwealth of Pennsylvania at all relevant times.

13. Upon information and belief, Electralloy Corporation ("Electralloy") is a New York corporation authorized to do and doing business in the Commonwealth of Pennsylvania at all relevant times.

14. Upon information and belief, Marcegaglia, S.p.A. ("Marcegaglia") is an Italian corporation authorized to do and doing business in the Commonwealth of Pennsylvania at all relevant times.

15. Upon information and belief, Marcegaglia USA, Inc. ("Marcegaglia USA") is a Pennsylvania corporation authorized to do and doing business in the Commonwealth of Pennsylvania at all relevant times.

16. Upon information and belief, Constitution Drive Partners, L.P. ("Constitution Drive Partners") is a Pennsylvania limited partnership authorized to do and doing business in the Commonwealth of Pennsylvania at all relevant times.

17. Upon information and belief, Sonobond Ultrasonics, Inc. ("Sonobond") is a Pennsylvania corporation authorized to do and doing business in the Commonwealth of Pennsylvania at all relevant times.

III. Gravamen of the Action

18. From in or about 1951 until in or about 1999, the site located at 1 Malin Road, Frazer, East Whiteland Township, Chester County, Commonwealth of Pennsylvania ("the Bishop Tube site") was used to manufacture and process metal alloy tubes and associated equipment.

19. From in or about 1951 through April 1, 1969, the Bishop Tube site was owned by subsidiary companies of Johnson Matthey including J. Bishop & Co., Platinum Works, Matthey

29. Upon information and belief, from in or about 1989 until in or about January 1991, Electralloy operated the Bishop Tube site for the manufacturing and processing of metal alloy tubes and associated equipment.

30. Upon information and belief, in or about September 1991, Christiana Metals reacquired Bishop Tube.

31. Upon information and belief, in or about September 1991, Christiana Metals transferred Bishop Tube's assets to Marcegaglia.

32. Upon information and belief, from in or about 1992 until in or about 1999, the Bishop Tube site was operated by Marcegaglia through its subsidiary companies including Bishop Tube, New Bishop Tube Co., Damascus-Bishop Tube Company and Marcegaglia USA for the manufacturing and processing of metal alloy tubes and associated equipment.

33. Upon information and belief, Marcegaglia is liable for the acts of Bishop Tube, New Bishop Tube Co., Damascus-Bishop Tube Company and Marcegaglia USA.

34. Upon information and belief, Marcegaglia is the successor entity for Bishop Tube, New Bishop Tube Co. and Damascus-Bishop Tube Company and, as such, is liable for the acts of those entities.

35. Upon information and belief, Marcegaglia USA is liable for the acts of Bishop Tube, New Bishop Tube Co. and Damascus-Bishop Tube Company.

36. Upon information and belief, Marcegaglia USA is the successor entity for Bishop Tube, New Bishop Tube Co. and Damascus-Bishop Tube Company and, as such, is liable for the acts of those entities.

37. During their respective periods of ownership and operation of the Bishop Tube site, the Defendants used or permitted the use of hazardous substances, including trichloroethylene ("TCE"), during the manufacturing processes for their seamless stainless steel and other products.

38. TCE is a known carcinogenic.

39. As a result of the Defendants' ownership and operations at the Bishop Tube site, hazardous substances, including TCE, were disposed into the environment, including the Bishop Tube site's soils and groundwater.

40. Subsurface migration of contaminated groundwater from the Bishop Tube site has and continues to contaminate the aquifer beneath the Bishop Tube site and beneath off-site premises including the Plaintiffs' home located at 54 Conestoga Road in Malvern, Pennsylvania (the "Warren property") including the Plaintiffs' well water, which is their sole source of drinking water.

41. The Plaintiffs' contaminated drinking water poses an imminent and substantial endangerment to their health and safety.

42. Upon information and belief, in or about 1980, the United States Environmental Protection Agency ("EPA") added the Bishop Tube site to the Comprehensive Environmental Response, Compensation and Liability Information List ("CERCLIS").

43. Upon information and belief, in or about 1983, the Pennsylvania Department of Environmental Protection ("PADEP"), under contract with the EPA, conducted a non-invasive, non-sampling preliminary assessment of the Bishop Tube site.

44. Upon information and belief, in or about 1985, the EPA conducted a subsurface investigation.

45. Upon information and belief, from in or about 1981 until in or about 1999, Christiana Metals conducted various partial characterizations of the Bishop Tube site.

46. Upon information and belief, in or about 1999, Christiana Metals abandoned its work at the Bishop Tube site.

47. Upon information and belief, Sonobond acquired and/or merged with Christiana Metals.

48. Upon information and belief, Sonobond is liable for the acts of Christiana Metals and Bishop Tube.

49. Upon information and belief, Sonobond is the successor entity for Christiana Metals and Bishop Tube and, as such, is liable for the acts of those entities. Upon information and belief, in or about 1999, the PADEP took over response actions at the Bishop Tube site, which included periodic sampling of soil, surface water, groundwater, vapor intrusion pathway analysis and maintenance of monitoring wells in the contaminated aquifer.

50. Constitution Drive Partners is the current owner the Bishop Tube site.

51. Upon information and belief, Constitution Drive Partners has conducted limited response actions at the Bishop Tube site under an agreement with the PADEP which included the installation of a soil vapor extraction and air sparging system designed to capture and remove contamination from subsurface soils at the Bishop Tube site.

52. Upon information and belief, none of the Defendants have taken any steps to actively and effectively remediate the contamination that originated on the Bishop Tube site, which has and continues to migrate onto the Warren property and neither the EPA nor the PADEP have taken any steps to compel such remedial activity.

53. Further response action is necessary to abate the release of the hazardous substances at the Bishop Tube site which have and continue to migrate onto the Warren property.

54. A Notice of Intent to Sue was served on all Defendants as well as the United States Environmental Protection Agency and Pennsylvania Department of Environmental Protection on December 8, 2014, to which no one has responded.

First Cause of Action (CERCLA)

55. The Plaintiffs incorporate Paragraphs 1-54 as if more fully set forth herein.

56. The Defendants are “persons” within the meaning of Section 101(21) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §9601(21).

57. The Bishop Tube site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

58. TCE is a “hazardous substance” within the meaning of Section 101(14)(c) of CERCLA, §9601(14)(c).

59. There has been a “release” of hazardous substances at the Bishop Tube site within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

60. The PADEP has determined that there may be an imminent and substantial endangerment to the public health, safety or welfare or the environment because of the release of hazardous substances at the Bishop Tube site.

61. In response to the release of hazardous substances at the Bishop Tube site and migration of those hazardous substances onto the Warren property, response actions were taken and are needed which have and will result in the incurrence of response costs within the meaning of Section 101 of CERCLA, 42 U.S.C. §9601, which will be consistent with the National Contingency Plan promulgated by the EPA pursuant to Section 105 of CERCLA, 42 U.S.C. §9607(a)(2).

62. As a result of the release of hazardous substances at the Bishop Tube site and migration of those hazardous substances onto the Warren property, Plaintiffs have sustained injury to, destruction of and/or loss of natural resources within the meaning of Section 107(a)(4)(C) of CERCLA, 42 U.S.C. §9613(a)(4)(C), and are entitled to all damages and the reasonable costs of assessing such injury, destruction and loss resulting from such a release.

63. Defendants are among the class of persons described in Section 107(a) of CERCLA, 42 U.S.C. §9607. Specifically, Defendants were persons who, at the time of disposal

of hazardous substances, owned or operated the Bishop Tube site within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2).

64. Defendants are jointly and severally liable to the Plaintiffs under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for the payment of response costs required as a result of the release of hazardous substances at the Bishop Tube site which have and continue to migrate onto the Warren property.

65. Plaintiffs are also entitled to a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. §9613(g)(2).

Second Cause of Action (RCRA)

66. The Plaintiffs incorporate Paragraphs 1-65 as if more fully set forth herein.

67. Plaintiffs are “persons” within the meaning of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §6972.

68. Defendants are “persons” within the meaning of RCRA, 42 U.S.C. §6972.

69. Defendants are “past or present generator[s], past or present transporter[s], or past or present owner[s] or operator[s] of a treatment, storage, or disposal facility” within the meaning of RCRA, 42 U.S.C. §6972.

70. Defendants have contributed and continue to contribute to the past or present handling, storage, treatment, transportation, or disposal of solid and/or hazardous waste which may present an imminent and substantial endangerment to health or the environment within the meaning of RCRA, 42 U.S.C. §6972.

71. Defendants are jointly and severally liable to the Plaintiffs under RCRA, 42 U.S.C. §6972, to immediately respond to and abate the release of hazardous substances at the Bishop Tube site which have and continue to migrate onto the Warren property, to prevent any

further endangerment and for all costs, including attorneys' and expert witness fees, incurred in connection with bringing this action.

Third Cause of Action (HSCA)

72. The Plaintiffs incorporate Paragraphs 1-71 as if more fully set forth herein.

73. Defendants are responsible parties within the meaning of Section 701(a)(1) of the Pennsylvania Hazardous Sites Cleanup Act ("HSCA"), 35 P.S. §6020.701(a)(1).

74. Section 507(a) of HSCA states that Responsible Parties shall be liable for response costs and for damages to natural resources. 35 P.S. §6020.507(a).

75. In response to the release of hazardous substances at the Bishop Tube site which have and continue to migrate onto the Warren property, the Plaintiffs have taken actions and incurred costs within the meaning of Section 103 and 507 of HSCA, 35 P.S. 21216020.103 and 6020.507.

76. Defendants are jointly and severally liable to the Plaintiffs under Section 507(a) of HSCA, 35 P.S. §6020.507(a), for the payment of costs incurred by the Plaintiffs as a result of the release of hazardous substances at the Bishop Tube site which have and continue to migrate onto the Warren property.

Fourth Cause of Action (Negligence)

77. The Plaintiffs incorporate Paragraphs 1-76 as if more fully set forth herein.

78. By releasing hazardous substances at the Bishop Tube site, which have and continue to migrate onto the Warren property, Defendants have engaged in negligence *per se*.

79. Defendants owed a duty of care to Plaintiffs to responsibly own and operate the Bishop Tube site, respond to spills and releases of hazardous substances and prevent such releases and spills and to take all measures reasonably necessary to inform and protect the public, including Plaintiffs, from the release of hazardous substances at the Bishop Tube site which have and continue to migrate onto the Warren property.

80. Defendants, including their officers, agents and/or employees, knew or in the exercise of reasonable care should have known of the dangerous, offensive, hazardous and toxic nature of the release of hazardous substances at the Bishop Tube site which have and continue to migrate onto the Warren property and that they were capable of causing serious personal injury to persons coming into contact with them, polluting Plaintiffs' water supply, damaging property and causing natural resource damage.

81. Defendants, including their officers, agents and/or employees, should have taken reasonable precautions and measures to prevent and mitigate the release and spills, including the design and operation of process systems so that such releases and spills did not occur, as well as adequate planning for such spills and release or other emergencies. They did not.

82. Defendants, including their officers, agents and/or employees, knew, or in the exercise of reasonable should have known, that once a spill or release occurred, they should take reasonable measures to protect the public, including by issuing immediate and adequate warnings to nearby residents, including Plaintiffs, to emergency personnel and to public officials. They did not.

83. Defendants, including their officers, agents and/or employees, knew or in the exercise of reasonable care should have known that the spills and releases causes by Defendants' negligent conduct, and the resultant harm to Plaintiffs and their property were foreseeable and inevitable consequences of Defendants' acts and/or omissions in the manner in which they owned and/or operated the Bishop Tube site.

84. Defendants, including their officers, agents and/or employees, acted unreasonably and negligently in causing and/or permitting the release and spills at the Bishop Tube site and the contamination of the Warren property including Plaintiffs' water supply and failed to take reasonable measures and precautions necessary to avoid and/or respond to the

spills and releases of hazardous chemicals, and to protect the public, including the Plaintiffs, from the hazardous chemicals.

85. Defendants' acts and/or omissions mentioned herein were the direct and proximate cause of the damages and injuries to Plaintiffs.

86. Contamination resulting from the Defendants' negligence continues to the present and is likely to continue into the future, unless injunctive relief is awarded by this Court abating the nuisances.

87. Some or all of the acts and/or omissions of the Defendants were grossly, recklessly and wantonly negligent and were done with utter disregard for the consequences to Plaintiffs and other persons and, therefore, Plaintiffs are entitled to an award of punitive damages.

88. Plaintiffs in no way contributed to the damages and injuries they have sustained.

89. Defendants, by reason of their negligence, are liable for all the damages and injuries to Plaintiffs proximately caused by the spills and releases of hazardous chemicals indicated herein and to remediate the contamination caused by such spills and releases.

Fifth Cause of Action (Private Nuisance)

90. The Plaintiffs incorporate Paragraphs 1-89 as if more fully set forth herein.

91. Defendants, by their acts and/or omissions, including those of their officers, agents and/or employees, have caused an unreasonable and substantial ongoing interference with Plaintiffs' right to use and enjoy their property.

92. Defendants, including their officers, agents and/or employees, have created and maintained a continuing nuisance on the Warren property by allowing the release of hazardous substances at the Bishop Tube site which have and continue to migrate onto the Warren property and contaminating the Warren property and drinking water supply and resulting in injuries to Plaintiffs' health, well-being and property.

93. This nuisance continues to this day and is likely to continue into the future.

94. Defendants, by reason of this private nuisance, are liable for all the damages and injuries to Plaintiffs proximately caused by the spills, releases and contamination and to remediate the contamination.

Sixth Cause of Action (Strict Liability)

95. The Plaintiffs incorporate Paragraphs 1-94 as if more fully set forth herein.

96. The hazardous substances and chemicals used, processed, stored and generated from the Bishop Tube site were of a toxic and hazardous nature capable of causing severe personal injuries and damages to persons and property coming in contact with them and, therefore, were ultra-hazardous and abnormally dangerous.

97. The use, processing, storage, generation and activity at the Bishop Tube site adjacent to residential properties was an abnormally dangerous and ultra-hazardous activity that subjected persons coming into contact with the hazardous chemicals and substances to severe personal injuries regardless of the degree of caution Defendants might have exercised.

98. Defendants, by engaging in abnormally dangerous and ultra-hazardous activities, are strictly liable with regard to fault for all the damages and injuries to Plaintiffs proximately caused by the spills, releases and contamination caused by Defendants and to remediate said contamination.

Seventh Cause of Action (Trespass)

99. The Plaintiffs incorporate Paragraphs 1-98 as if more fully set forth herein.

100. Defendants' aforementioned acts both constituted and resulted in such physical invasion of the Warren property and the aquifers underlying the Warren property that Plaintiffs have suffered damages to such property and to the health and well-being of their family.

Eighth Cause of Action (Medical Monitoring Trust Funds)

101. The Plaintiffs incorporate Paragraphs 1-100 as if more fully set forth herein.

102. As a result of Defendants' acts and/or omissions, Plaintiffs have been exposed to hazardous substances.

103. The level of hazardous substances to which Plaintiffs have been exposed are greater than normal background levels.

104. As a proximate result of their exposure to such hazardous substances, Plaintiffs have a significantly increased risk of contracting a serious latent disease.

105. A monitoring procedure exists that makes the early detection of the disease possible.

106. Such early detection will help to ameliorate the severity of the disease. The prescribed monitoring regime is different from that normally recommended in the absence of the exposure.

107. The prescribed monitoring regime is reasonably necessary according to contemporary medical opinion.

Wherefore, Plaintiffs pray this Honorable Court for judgment as follows:

- a. The reasonable and necessary costs of remediation of the hazardous substances and contaminants;
- b. A preliminary and permanent injunction barring Defendants requiring Defendants to abate the aforesaid nuisances, wrongful acts, violations and damages created by them as a result of their ownership and/or operation of the Bishop Tube site;
- c. The cost of future health monitoring;
- d. Compensatory damages for the loss of property value, damage to the natural resources of the environment in and around the Plaintiffs' property, medical costs, loss of use and enjoyment of their property, loss of quality of life, emotional distress, personal injury and such other reasonable damages incidental to the claims;
- e. Punitive damages for Defendants' fraudulent misrepresentation and gross negligence;
- f. Plaintiff's litigation costs and fees, including attorneys and expert witness fees; and
- g. Any further relief that the Court may find appropriate.

Jury Demand

Pursuant to Rule 38 of the Federal Rules of Civil procedure, Plaintiffs Bradley Warren and Paula Gay Warren hereby demand a jury trial in this action on all the issues so triable.

Respectfully submitted,

HARRITON & FURRER, LLP

by: /s/ Urs Broderick Furrer

Urs Broderick Furrer

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Dated: August 11, 2015

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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BRADLEY WARREN and PAULA GAY WARREN,

Plaintiffs,

No.: 2:15-cv-01919 (GJP)

v.

JOHNSON MATTHEY, INC., BISHOP TUBE CO.,
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MARCEGAGLIA, S.P.A., MARCEGAGLIA USA, INC.
CONSTITUTION DRIVE PARTNERS, L.P. and
BONOBOND ULTRASONICS, INC.,

Certificate of Service

Defendants.

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I, Urs Broderick Furrer, being sworn, say; I am not a party to the action, am over 18 years of age and am employed by Harriton & Furrer, LLP, 84 Business Park Drive, Armonk, New York 10504.

On August 11, 2015, I also served the within **First Amended Complaint with Jury Demand** by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York, addressed to:

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URS BRODERICK FURRER

Dated: August 11, 2015