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PROthonary's OFFICE  
LANCASTER, PA

NEIL DURKIN LAW OFFICE, LLC  
BY: NEIL E. DURKIN, ESQUIRE  
IDENTIFICATION NO. 65265  
601 LONGWOOD AVENUE  
CHERRY HILL, NJ 08002  
(856) 330-6284  
ATTORNEY FOR PLAINTIFF

TIMOTHY PLEVA  
1263 Stammans Lane  
Columbia, PA 17512

v.

MPE MACHINE TOOL, INC.  
27 West Washington Street  
Corry, PA 16407

COURT OF COMMON PLEAS  
LANCASTER COUNTY

NO: 19-00109

**NOTICE TO PLEAD**

**NOTICE**

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

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

THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LANCASTER COUNTY BAR ASSOCIATION  
LAWYER REFERRAL AND  
INFORMATION SERVICE  
28 East Orange Street  
Lancaster, PA 17602  
Telephone: 717-393-0737

**AVISO**

Le han demandado en corte. Si usted quiere defenderse contra las demandas nombradas en las paginas siguientes, tiene veinte (20) dias a partir de recibir esta demanda y notificacion para entablar personalmente o por un abogado una comparecencia escrita y tambien para entablar con la corte en forma escrita sus defensas y objeciones a las demandas contra usted. Sea avisado que si usted no se defiende, el caso puede continuar sin usted y la corte puede incorporar un juicio contra usted sin previo aviso para conseguir el dinero demandado en el plieto o para conseguir cualquier otra demanda o alivio solicitados por el demandante. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE ABOGADO O NO TIENE DINERO SUFICIENTE PARA PAGAR A UN ABOGADO, VAYA EN PERSONA O LLAME POR TELEFONO LA OFICINA NOMBRADA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL. ESTA OFICINA PUEDE PROPORCIONARLE LA INFORMACION SOBRE CONTRATAR A UN ABOGADO.

SI USTED NO TIENE DINERO SUFICIENTE PARA PAGAR A UN ABOGADO, ESTA OFICINA PUEDE PROPORCIONARLE INFORMACION SOBRE AGENCIAS QUE OFRECEN SERVICIOS LEGALES A PERSONAS QUE CUMPLEN LOS REQUISITOS PARA UN HONORARIO REDUCIDO O NINGUN HONORARIO.

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14-2019  
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(2) to Sheriff  
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COURT OF COMMON PLEAS  
LANCASTER COUNTY

NO: 19-00109

**COMPLAINT**

1. Plaintiff Timothy Pleva is an adult individual residing at the above-captioned address.

2. Defendant MPE Machine Tool, Inc., (hereinafter "MPE") is a Pennsylvania corporation with its address at the above-captioned address.

3. Defendant MPE was the manufacturer and/or seller of a Four Spindle Boring Machine which was sold to Burnham Hydronics which operates a plant under the name U.S. Boilers in Lancaster, Pennsylvania.

4. At all relevant times, Plaintiff Pleva was an employee at U.S. Boiler and was an operator of the boring machine.

5. On or about February 1, 2017, Pleva was placing a metal plate on the boring machine when a failsafe switch activated causing the machine to enter failsafe mode. Under the programming at that time, failsafe mode activated the clamps which normally hold a plate in place during drilling. Because Pleva was loading a plate, his left ring finger was smashed

between the plate and the clamp ultimately resulting in a partial amputation.

6. As a further direct and proximate result of the aforesaid incident, Plaintiff has in the past and may be required in the future to expend money for medical treatment or need medical appliances.

7. As a further direct and proximate result of the aforesaid incident, Plaintiff has in the past and may in the future suffer a loss of wages, and/or earning capacity, and loss of the benefits of his employment, all to his great detriment and loss, financial and otherwise.

8. As a further direct and proximate result of the aforesaid incident, Plaintiff has in the past and may in the future be prevented from performing his customary duties, familial responsibilities and avocations, all to his great detriment and loss, financial and otherwise.

9. As a further direct and proximate result of the aforesaid incident, Plaintiff has suffered a partial amputation of his left ring finger, pain, suffering, disfigurement, mental anguish and distress and other physical and emotional damages.

### **COUNT I STRICT LIABILITY**

10. Plaintiff hereby incorporates by reference thereto the allegations of the preceding paragraphs as though set forth at length herein.

11. Defendant MPE is in the business of designing, manufacturing, and selling industrial equipment.

12. Defendant MPE manufactured, designed, and/or sold the product which is the subject of this lawsuit.

13. The product at the time it left the custody and control of Defendant was in a defective condition, dangerous to the users of said product, in the following respects:

- (a) the failsafe mode activated by the limit switch in question would cause the clamps to unexpectedly activate;
- (b) workers would not expect the clamps to engage while loading a plate because of other safety devices to avoid the interaction of worked with moving parts;
- (c) the programming originally placed into the machine was faulty;
- (d) there was no warning device to alert the employee to the activation of the clamps;
- (e) it was not in a merchantable condition, safe and fit for its general and intended purposes as herein alleged.

14. The product in question was in substantially the same condition at the time of Plaintiff's injury as it was when it left the control of Defendant.

15. The product was used by Plaintiff for the purpose and in the manner intended and/or reasonably foreseeable by Defendant.

16. As a direct and proximate result of the defective condition of the product, Plaintiff was caused to suffer the injuries, harm and damages as set forth above.

17. Defendant is strictly liable, pursuant to the Restatement Second of Torts §402A, for the Plaintiff's harm, damage and injury by reason of having placed a defective product into the stream of commerce and through the manufacture, design, distribution and/or sale of the defective product, which was unreasonably dangerous to consumers or users.

**WHEREFORE**, Plaintiff Timothy Pleva demands judgment against Defendant MPE for damages in excess of the arbitration limits of Lancaster County, together with such other relief as the law may allow.

**COUNT II  
NEGLIGENCE**

18. Plaintiff hereby incorporates by reference thereto the allegations of the preceding paragraphs as though set forth at length herein.

19. Defendant MPE as the manufacturer, designer and distributor of the product described herein, owed a duty to design, manufacture, market and distribute said product in a careful and prudent manner, making it reasonably safe for its intended and reasonably foreseeable uses.

20. Defendant MPE was negligent in manufacturing, designing, marketing and distributing a dangerous and defective product in the following respects:

(a) the failsafe mode activated by the limit switch in question would cause the clamps to unexpectedly activate;

(b) workers would not expect the clamps to engage while loading a plate because of other safety devices to avoid the interaction of worked with moving parts;

(c) the programming originally placed into the machine was faulty;

(d) there was no warning device to alert the employee to the activation of the clamps.

**WHEREFORE**, Plaintiff Timothy Pleva demands judgment against Defendant MPE for damages in excess of the arbitration limits of Lancaster County, together with such other relief as the law may allow.

**COUNT III**  
**BREACH OF WARRANTY**

21. Plaintiff hereby incorporates by reference thereto the allegations of the preceding paragraphs as though set forth at length herein.

22. Defendant MPE impliedly warranted that the product it designed, manufactured, distributed and/or sold was merchantable, fit for the purposes for which it was intended and not otherwise defective.

27. Defendant MPE breached its implied warranties described above in that the product was not merchantable, not fit for the purpose for which it was intended and was unreasonably dangerous and defective as herein alleged.

28. As a direct and proximate result of Defendant MPE's breach of implied warranties, Plaintiff sustained the injuries, harm and damages, as herein alleged.

WHEREFORE, Plaintiff Timothy Pleva demands judgment against Defendant MPE for damages in excess of the arbitration limits of Lancaster County, together with such other relief as the law may allow.

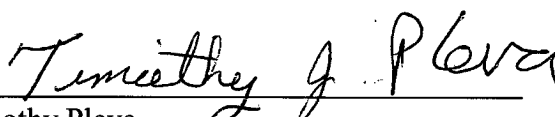
NEIL DURKIN LAW OFFICE

BY:   
NEIL E. DURKIN  
Attorney for Plaintiffs

DATED: 1-2-19

**VERIFICATION**

I, TIMOTHY PLEVA, hereby state that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 Pa.C.S. 4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Timothy Pleva

DATED: 12-27-2018

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Neil E. Durkin, Esq.

Signature: 

Name: Neil E. Durkin, Esq.

Attorney No. (if applicable): 65265



## **NOTICE**

**Pennsylvania Rule of Civil Procedure 205.5. (Cover Sheet) provides, in part:**

**Rule 205.5. Cover Sheet**

(a)(1) This rule shall apply to all actions governed by the rules of civil procedure except the following:

- (i) actions pursuant to the Protection from Abuse Act, Rules 1901 et seq.
- (ii) actions for support, Rules 1910.1 et seq.
- (iii) actions for custody, partial custody and visitation of minor children, Rules 1915.1 et seq.
- (iv) actions for divorce or annulment of marriage, Rules 1920.1 et seq.
- (v) actions in domestic relations generally, including paternity actions, Rules 1930.1 et seq.
- (vi) voluntary mediation in custody actions, Rules 1940.1 et seq.

(2) At the commencement of any action, the party initiating the action shall complete the cover sheet set forth in subdivision (e) and file it with the prothonotary.

(b) The prothonotary shall not accept a filing commencing an action without a completed cover sheet.

(c) The prothonotary shall assist a party appearing pro se in the completion of the form.

(d) A judicial district which has implemented an electronic filing system pursuant to Rule 205.4 and has promulgated those procedures pursuant to Rule 239.9 shall be exempt from the provisions of this rule.

(e) The Court Administrator of Pennsylvania, in conjunction with the Civil Procedural Rules Committee, shall design and publish the cover sheet. The latest version of the form shall be published on the website of the Administrative Office of Pennsylvania Courts at [www.pacourts.us](http://www.pacourts.us).

# Supreme Court of Pennsylvania

Court of Common Pleas

Civil Cover Sheet

LANCASTER

County

For Prothonotary Use Only:

Docket No:

19-00109

TIME STAMP

ENTERED AND FILED  
2019 MAR -4 PM 3:33  
CLERK OF COURT  
LANCASTER, PA

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

## Commencement of Action:

- ☒ Complaint ☐ Writ of Summons ☐ Petition  
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:  
Timothy Pleva

Lead Defendant's Name:  
MPE Machine Tool, Inc.

Are money damages requested? ☒ Yes ☐ No

Dollar Amount Requested: ☐ within arbitration limits  
(check one) ☒ outside arbitration limits

Is this a Class Action Suit? ☐ Yes ☒ No

Is this an MDJ Appeal? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Neil Durkin, Esquire

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

**Nature of the Case:** Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

### TORT (do not include Mass Tort)

- ☐ Intentional  
☐ Malicious Prosecution  
☐ Motor Vehicle  
☐ Nuisance  
☐ Premises Liability  
☒ Product Liability (does not include mass tort)  
☐ Slander/Libel/ Defamation  
☐ Other:

### CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff  
☐ Debt Collection: Credit Card  
☐ Debt Collection: Other  
☐ Employment Dispute: Discrimination  
☐ Employment Dispute: Other  
☐ Other:

### CIVIL APPEALS

- Administrative Agencies  
☐ Board of Assessment  
☐ Board of Elections  
☐ Dept. of Transportation  
☐ Statutory Appeal: Other

- ☐ Zoning Board  
☐ Other:

### MASS TORT

- ☐ Asbestos  
☐ Tobacco  
☐ Toxic Tort - DES  
☐ Toxic Tort - Implant  
☐ Toxic Waste  
☐ Other:

### REAL PROPERTY

- ☐ Ejectment  
☐ Eminent Domain/Condemnation  
☐ Ground Rent  
☐ Landlord/Tenant Dispute  
☐ Mortgage Foreclosure: Residential  
☐ Mortgage Foreclosure: Commercial  
☐ Partition  
☐ Quiet Title  
☐ Other:

### MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration  
☐ Declaratory Judgment  
☐ Mandamus  
☐ Non-Domestic Relations  
☐ Restraining Order  
☐ Quo Warranto  
☐ Replevin  
☐ Other:

### PROFESSIONAL LIABILITY

- ☐ Dental  
☐ Legal  
☐ Medical  
☐ Other Professional: