

THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

LAUREN ATKINS, ON HER OWN
BEHALF, AND ON BEHALF OF THE
ESTATE OF JOSHUA PAUL ATKINS,

Plaintiffs,

v.

RUST-OLEUM CORPORATION,

Defendant.

CIVIL DIVISION

Case No. GD18-012042

ANSWER AND NEW MATTER

Filed on behalf of Defendant,
Rust-Oleum Corporation

Counsel of Record for this Party:

Matthew M. Hoffman
Pa. I.D. # 43949
mhoffman@tuckerlaw.com

Tucker Arensberg, P.C.
1500 One PPG Place
Pittsburgh, PA 15222
(412) 566-1212

To: Counsel for Plaintiff

You are hereby notified to file a written response
to the within New Matter within twenty (20) days
following service hereof or a judgment may be
entered against you.

A handwritten signature in blue ink, appearing to be "M. Hoffman", is written over a horizontal line.

Attorney for Defendant, Rust-Oleum Corporation

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

LAUREN ATKINS, ON HER OWN
BEHALF, AND ON BEHALF OF THE
ESTATE OF JOSHUA PAUL ATKINS,

CIVIL DIVISION

Case No. GD18-012042

Plaintiffs,

v.

RUST-OLEUM CORPORATION,

Defendant.

ANSWER AND NEW MATTER

NOW COMES Defendant, Rust-Oleum Corporation ("Rust-Oleum"), by its attorneys, Tucker Arensberg, P.C., and submits the following Answer and New Matter in response to Plaintiff's Complaint, stating as follows:

1. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 1 of the Complaint.
2. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 2 of the Complaint.
3. Admitted.
4. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 4 of the Complaint.
5. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 5 of the Complaint concerning the knowledge or lack of knowledge of the decedent, Joshua Paul Atkins, concerning the hazards of methylene chloride. Rust-Oleum admits that its Aircraft Remover product contains methylene chloride. Rust-Oleum admits to having knowledge that the

inhalation of methylene chloride may be harmful or fatal and that there have been reported deaths resulting from the inhalation of methylene chloride-based paint strippers.

6. Rust-Oleum admits to having knowledge of reported deaths resulting from the inhalation of methylene chloride. Rust-Oleum admits that methylene chloride vapors are heavier than typical ambient air. Rust-Oleum denies that, when properly used, methylene chloride-based paint strippers are “particularly deadly when used within bathtubs.” Rust-Oleum denies that bathroom exhaust fans and windows categorically provide “highly ineffective” ventilation, since the adequacy of ventilation available in any particular area is dependent upon the specific circumstances present. To this end, Rust-Oleum’s Aircraft Remover product is labelled with various warnings compliant with applicable law and industry standards directing that the user “[u]se only with adequate ventilation,” “[e]nsure fresh air entry during application and drying,” “[u]se this product outdoors, if possible,” “[i]f you must use indoors, open all windows and doors or use other means to ensure fresh air movement during application and drying,” and “[d]o not use in basement or other unventilated area.”

7. Rust-Oleum admits to having knowledge of reported deaths resulting from the inhalation of methylene chloride, but denies having knowledge of “numerous” fatalities or the circumstances of such fatalities to be said to have “well known” of such reported deaths. Rust-Oleum admits to having knowledge of a death in 2011 of a 30-year old Ohio man who used Rust-Oleum’s Aircraft Remover. Rust-Oleum denies that the death of the Ohio man was the result of the proper use of the Aircraft Remover product.

8. The averments set forth in Paragraph 8 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. To the contrary, Rust-Oleum’s Aircraft Remover product labeling and Safety Data Sheet are and have been compliant with applicable law and industry standards.

9. The averments set forth in Paragraph 9 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. To the contrary, Rust-Oleum's Aircraft Remover product labeling is and has been compliant with applicable law and industry standards.

10. The averments set forth in Paragraph 10 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. To the contrary, Rust-Oleum's Aircraft Remover product labeling is and has been compliant with applicable law and industry standards.

11. The averments set forth in Paragraph 11 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

12. The averments set forth in Paragraph 12 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. To the contrary, the Material Data Safety Sheets and Safety Data Sheets for Rust-Oleum's Aircraft Remover product are and have been compliant with applicable law and industry standards.

13. Rust-Oleum admits that, in April 1993, it submitted a patent application, resulting in a granted patent at U.S. Patent Number 5,456,853, for a paint stripping composition that did not include methylene chloride. The remaining averments of Paragraph 13 purport to characterize the content of that written document, the actual content of which speaks for itself. Rust-Oleum denies any averments in Paragraph 13 contrary to that document.

14. Admitted.

15. Rust-Oleum admits that its NR.1 Green Paint Stripper is not sold within the United States. Rust-Oleum admits that its product brochure for NR.1 Green Paint Stripper includes the statement "Our NR.1 Green Paint Stripper is the healthier alternative to DCM paint strippers so do not wait and switch today." The remaining averments set forth in Paragraph 15

of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

16. The averments set forth in Paragraph 16 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

17. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 17 of the Complaint.

18. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 18 of the Complaint.

19. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 19 of the Complaint.

20. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 20 of the Complaint.

21. Admitted.

22. Rust-Oleum denies that it has manufactured and sold paint strippers containing methylene chloride since 1921. The remaining averments set forth in Paragraph 22 of the Complaint are admitted.

23. Admitted.

24. Admitted.

25. Admitted. By way of further response, the labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards, including the guidelines established by the American Coatings Association (formerly, the National Paint and Coatings Association).

26. Rust-Oleum admits that it is aware of its responsibilities with respect to product labeling and product stewardship and has the resources to fulfill those responsibilities. As a result, the labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements. The remaining averments set forth in Paragraph 26 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

27. The averments set forth in Paragraph 27 of the Complaint assert conclusions of law, to which no response is required by the Pennsylvania Rules of Civil Procedure. To the extent a response is required, the averments set forth in Paragraph 27 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure to the extent not consistent with applicable law.

28. Admitted.

29. Admitted.

30. Admitted.

31. Admitted.

32. The allegation set forth in Paragraph 32 that "unique chemical properties of methylene chloride significantly exacerbate its dangers and place a great responsibility on a manufacturer to provide detailed information" is generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. After reasonable investigation, Rust-Oleum is

without knowledge or information sufficient to affirm or deny the truth of the remaining averments set forth in Paragraph 32 of the Complaint.

33. Admitted. By way of further response, the labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements and, thus, is considered to contain effective warnings to consumers.

34. Admitted.

35. The averments set forth in Paragraph 35 are denied as stated. AutoZone and Rust-Oleum mutually desired that their retail distribution relationship enable AutoZone to sell a broad array of automotive paint-related products from a single manufacturer.

36. Rust-Oleum admits that AutoZone sold a paint stripper product manufactured by W.M. Barr that contained methylene chloride. The remaining averments set forth in Paragraph 36 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

37. Rust-Oleum admits that it examined the formulation of the W.M. Barr paint stripper product in the development by Rust-Oleum of its Aircraft Remover product. Rust-Oleum admits that the Aircraft Remover product had the highest concentration of methylene chloride than any other consumer paint stripper previously manufactured by Rust-Oleum. The remaining averments set forth in Paragraph 37 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

38. The averments set forth in Paragraph 38 are denied as stated. "Aircraft Remover" is an industry standard term in the automotive aftermarket used to indicate that it is the most aggressive paint stripper available for consumer use.

39. The averments set forth in Paragraph 39 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

40. Rust-Oleum admits that, in May 2009, the European Parliament enacted a directive (Decision No. 455/2009/EC) banning the distribution of paint strippers containing dichloromethane for sale to the general public after December 6, 2011, and use by professionals after June 6, 2012. The decision in support of the directive noted that fatalities recorded in Europe from the use of such products mainly were attributable to, inter alia, inadequate ventilation. The remaining averments of Paragraph 40 purport to characterize the content of that enactment, the actual content of which speaks for itself. Rust-Oleum denies any averments in Paragraph 40 contrary to that document.

41. Admitted.

42. Rust-Oleum admits that it markets and sells products in Europe and that it is aware of the 2009 enactment by the European Parliament of Decision No. 455/2009/EC. The averments set forth in Paragraph 42 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

43. Admitted.

44. The averments set forth in Paragraph 44 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

45. Admitted.

46. Admitted, except that the Environmental Protection Agency's announcement occurred on May 10, 2018.

47. Admitted.

48. Rust-Oleum admits that the report issued by the Centers for Disease Control and Prevention in February 2012 refers to 13 fatalities among bathtub refinishers associated with the use of a paint stripping product containing methylene chloride. The report notes that each of the 13 fatalities resulted from use of the methylene chloride-based product in a residential

bathroom with inadequate ventilation. Rust-Oleum admits that the report states that the number of identified fatalities likely is an underestimate.

49. Admitted.

50. Rust-Oleum admits that the report issued by the Centers for Disease Control and Prevention in February 2012 refers to fatalities among bathtub refinishers associated with the use of paint stripping products containing 60% to 100% of methylene chloride by volume. Rust-Oleum admits that its Aircraft Remover product contains 85% of methylene chloride by volume. Rust-Oleum admits that the fatality in 2011 of a 30-year old Ohio man involved the use of Rust-Oleum's Aircraft Remover. Rust-Oleum denies that the death of the Ohio man was the result of the proper use of the Aircraft Remover product.

51. Admitted.

52. Admitted. By way of further response, the labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements concerning communication of the hazards associated with methylene chloride-based paint stripping products.

53. While Rust-Oleum admits that the statement that "[e]xcessive inhalation may produce . . . death" contained in the 2009 Material Data and Safety Sheets for the Aircraft Remover product was not contained in subsequent iterations of that document, the Material Data and Safety Sheets and Safety Data Sheets for Rust-Oleum's Aircraft Remover product are and have been compliant with applicable law and industry standards. The remaining averments set forth in Paragraph 53 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

54. Admitted. The Clear & Base Coat Remover product distributed in 2009 was an aerosol by which the product is discharged as suspended particles in the air thereby presenting a greater likelihood of inhalation by the user than similarly constituted products in liquid form.

55. Rust-Oleum admits that Paragraph 55 of the Complaint contains accurate recitations of statements within the August 2012 report issued by or on behalf of the Washington State Department of Labor & Industries. The remaining averments set forth in Paragraph 55 of the Complaint purporting to characterize that document are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

56. The averments set forth in Paragraph 56 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

57. Admitted.

58. Rust-Oleum admits that the Hazard Alert issued by the Occupational Safety and Health Administration and National Institute for Occupational Safety and Health in January 2013 references a February 2012 fatality and a September 2011 fatality involving the use of products containing methylene chloride. Rust-Oleum believes that the reference within the Hazard Alert to the September 2011 fatality refers to the Ohio incident involving the use of Rust-Oleum's Aircraft Remover. Rust-Oleum denies that the death of the Ohio man was the result of the proper use of the Aircraft Remover product.

59. The averments set forth in Paragraph 59 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

60. Rust-Oleum admits that Melissa Grimm is Rust-Oleum's Brand Manager for Aircraft Remover. Rust-Oleum admits that Paragraph 60 of the Complaint accurately quotes an excerpt from a 2014 deposition, in which Ms. Grimm further explained that "I would say that it would be dangerous to use in a bathroom because unless you have windows open, a strong fan

blowing, wearing a mask. I don't know that you would have the proper ventilation, so I say it would be dangerous." Except as so admitted, any remaining averments set forth in Paragraph 60 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

61. Rust-Oleum admits that the label to the Aircraft Remover product does not state that the product should not be used in bathrooms. Rust-Oleum's Aircraft Remover product is labelled with various warnings compliant with applicable law and industry standards directing that the user "[u]se only with adequate ventilation," "[e]nsure fresh air entry during application and drying," "[u]se this product outdoors, if possible," "[i]f you must use indoors, open all windows and doors or use other means to ensure fresh air movement during application and drying," and "[d]o not use in basement or other unventilated area." The remaining averments set forth in Paragraph 61 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

62. Rust-Oleum admits that, on April 26, 2018 (subsequent to the incident involved in this proceeding), the Consumer Product Safety Commission issued supplemental guidance recommending the use of the statement set forth in Paragraph 62 of the Complaint for labeling of paint stripper products containing methylene chloride. Rust-Oleum denies the Complaint's characterization of such publication as a directive.

63. The averments set forth in Paragraph 63 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. To the contrary, the labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements.

64. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 64 of the Complaint.

65. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 65 of the Complaint.

66. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 66 of the Complaint.

67. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 67 of the Complaint.

68. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 68 of the Complaint.

69. The averments set forth in Paragraph 69 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. To the contrary, the labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements, included multiple warnings of health risks associated with the product and directed that the user “[u]se only with adequate ventilation,” “[e]nsure fresh air entry during application and drying,” “[u]se this product outdoors, if possible,” “[i]f you must use indoors, open all windows and doors or use other means to ensure fresh air movement during application and drying,” and “[d]o not use in basement or other unventilated area.”

70. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 70 of the Complaint.

71. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 71 of the Complaint.

72. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 72 of the Complaint.

73. Admitted.

74. The averments set forth in Paragraph 74 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

75. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 75 of the Complaint.

76. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 76 of the Complaint.

77. Admitted.

78. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 78 of the Complaint.

79. Admitted.

80. The averments set forth in Paragraph 80 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

81. The averments set forth in Paragraph 81 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

82. The averments set forth in Paragraph 82 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

83. The averments set forth in Paragraph 83 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

84. The averments set forth in Paragraph 84 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

85. The averments set forth in Paragraph 85 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

Count I

86. Rust-Oleum incorporates by reference the preceding paragraphs of this Answer and New Matter as if fully set forth herein.

87. Admitted.

88. Admitted.

89. Admitted.

90. Admitted.

91. Admitted. By way of further response, the labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with labeling requirements established pursuant to the Federal Hazardous Substances Act.

92. The averments set forth in Paragraph 92 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. To the contrary, the

labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with labeling requirements established pursuant to the Federal Hazardous Substances Act.

93. Admitted.

94. Admitted.

95. The averments of Paragraph 95 purport to characterize the content of the notice of interpretation issued by the Consumer Product Safety Commission on September 14, 1987, the actual content of which speaks for itself. Rust-Oleum denies any averments in Paragraph 95 contrary to that document.

96. Admitted.

97. The averments set forth in Paragraph 97 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. The labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with applicable law and industry standards

98. Rust-Oleum admits that Paragraph 98 of the Complaint quotes a passage contained in the guidance issued by the Consumer Product Safety Commission on March 21, 2018 (subsequent to the incident involved in this proceeding).

99. Rust-Oleum admits that Paragraph 99 of the Complaint quotes the narrative portion of the principle display panel of the Aircraft Remover container. That narrative also is accompanied by a skull and cross bones pictogram, signifying acute toxicity (fatal or toxic), consistent with Consumer Product Safety Commission regulations.

100. The averments set forth in Paragraph 100 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

101. The averments set forth in Paragraph 101 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. The labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements.

102. Rust-Oleum admits that Paragraph 102 of the Complaint quotes a passage contained in guidance issued by the Consumer Product Safety Commission on March 21, 2018 (subsequent to the incident involved in this proceeding).

103. Rust-Oleum admits that Paragraph 103 of the Complaint quotes a passage contained in supplemental guidance issued by the Consumer Product Safety Commission on April 26, 2018 (subsequent to the incident involved in this proceeding).

104. The averments set forth in Paragraph 104 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. The labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements.

105. Admitted.

106. The averments set forth in Paragraph 106 of the Complaint are denied. The labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements.

107. The averments set forth in Paragraph 107 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. The labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements.

108. Rust-Oleum admits that Bruce Varner is Rust-Oleum's Director of Product Stewardship. Rust-Oleum admits that, in a 2014 deposition, Mr. Varner stated in relation to

methylene chloride: "And of course, any solvent that you inhale, if it's concentrated and inhaled, can cause death." Except as so admitted, any remaining averments set forth in Paragraph 108 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

109. The averments set forth in Paragraph 109 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. The labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements.

110. The averments set forth in Paragraph 110 purport to summarize and/or characterize the content of regulations promulgated by the Consumer Product Safety Commission. Rust-Oleum denies any averments in Paragraph 110 contrary to the actual content of any regulation, guidance or other document published by the Consumer Product Safety Commission. Rust-Oleum admits that a regulation promulgated by the Consumer Product Safety Commission direct that labels of products containing hazardous substances not include words, statements, designs, or other graphic material that in any manner negates or disclaims any of the label statements required by the Federal Hazardous Substances Act. The label on Rust-Oleum's Aircraft Remover complies with such regulation.

111. Rust-Oleum admits that Paragraph 111 of the Complaint quotes a passage from the regulation promulgated by the Consumer Product Safety Commission at 16 C.F.R. 1500.122. The remaining averments set forth in Paragraph 111 purport to summarize and/or characterize the content of that regulation. Rust-Oleum denies any averments in Paragraph 111 contrary to the actual content of any regulation.

112. Rust-Oleum admits that, on April 26, 2018 (subsequent to the incident involved in this proceeding), the Consumer Product Safety Commission issued supplemental guidance recommending the use of the statement set forth in Paragraph 112 of the Complaint for labeling

of paint stripper products containing methylene chloride. Rust-Oleum denies the Complaint's characterization of such publication as a directive.

113. The averments set forth in Paragraph 113 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. The labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements.

114. The averments set forth in Paragraph 114 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. The labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements.

115. The averments set forth in Paragraph 115 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. The labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements.

116. The averments set forth in Paragraph 116 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. The labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements.

117. The averments set forth in Paragraph 117 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. The labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements.

118. The averments set forth in Paragraph 118 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. The labeling of the

Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements.

WHEREFORE, Defendant, Rust-Oleum Corporation, respectfully demands judgment in its favor and against Plaintiff, together with an award of costs of suit and such other relief as the Court deems appropriate.

Count II

119. Rust-Oleum incorporates by reference the preceding paragraphs of this Answer and New Matter as if fully set forth herein.

120. The averments set forth in Paragraph 120 of the Complaint assert conclusions of law, to which no response is required by the Pennsylvania Rules of Civil Procedure. To the extent a response is required, the averments set forth in Paragraph 120 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure to the extent not consistent with applicable law.

121. The averments set forth in Paragraph 121 of the Complaint assert conclusions of law, to which no response is required by the Pennsylvania Rules of Civil Procedure. To the extent a response is required, the averments set forth in Paragraph 121 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure to the extent not consistent with applicable law.

122. Admitted. By way of further response, the labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards, including the guidelines established by the American Coatings Association (formerly, the National Paint and Coatings Association).

123. The averments set forth in Paragraph 123 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. The labeling of and

product information for the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements.

124. The averments set forth in Paragraph 124 of the Complaint assert conclusions of law, to which no response is required by the Pennsylvania Rules of Civil Procedure. To the extent a response is required, the averments set forth in Paragraph 124 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure to the extent not consistent with applicable law.

125. Admitted. By way of further response, the labeling of the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards, including the guidelines established by the American Coatings Association (formerly, the National Paint and Coatings Association).

126. The averments of Paragraph 126 of the Complaint are denied as stated. While, prior to February 2018, Rust-Oleum had general knowledge that there had been fatalities attributed to the inhalation of methylene chloride, Rust-Oleum did not have specific knowledge of “scores” of such incidents or the circumstances involved with each such incident.

127. The averments of Paragraph 127 of the Complaint are denied as stated. Prior to February 2018, Rust-Oleum had knowledge that methylene chloride was a hazardous substance, necessitating compliance with labeling requirements of the Federal Hazardous Substances Act. The labeling of and product information for the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements.

128. The averments of Paragraph 128 of the Complaint are denied as stated. While, prior to February 2018, Rust-Oleum had general knowledge that there had been fatalities attributed to the use of methylene chloride, Rust-Oleum did not have specific knowledge of

such incidents or the circumstances involved with each such incident. Rust-Oleum had knowledge that methylene chloride was a hazardous substance, necessitating compliance with labeling requirements of the Federal Hazardous Substances Act. The labeling of and product information for the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements.

129. The averments set forth in Paragraph 129 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. Rust-Oleum had knowledge that methylene chloride was a hazardous substance, necessitating compliance with labeling requirements of the Federal Hazardous Substances Act. The labeling of and product information for the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements.

130. The averments set forth in Paragraph 130 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. Rust-Oleum had knowledge that methylene chloride was a hazardous substance, necessitating compliance with labeling requirements of the Federal Hazardous Substances Act. The labeling of and product information for the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements.

131. The averments set forth in Paragraph 131 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. The labeling of and product information for the Aircraft Remover product at issue in this proceeding is and has been compliant with industry standards and regulatory requirements.

132. Admitted.

133. The averments set forth in Paragraph 133 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

134. Rust-Oleum admits that the label of the Aircraft Remover does not advise the consumer what information is contained in the Technical Data Sheet. The remaining averments set forth in Paragraph 134 of the Complaint are denied. Industry standards and/or applicable regulations do not require that a product label advise consumers what information is contained in a Technical Data Sheet. The product label contains Rust-Oleum's website URL and telephone numbers which a consumer reasonably would understand to utilize to contact Rust-Oleum for additional product information.

135. Rust-Oleum admits that the Technical Data Sheet for Aircraft Remover, dated March 29, 2017, does not state health effects from exposure to that product. Rust-Oleum denies that either industry standards or applicable regulations require a Technical Data Sheet to provide information on health effects of exposure to a product. The purpose of a Technical Data Sheet is to provide information on the applications of a product and guidance for its use. In contrast, information on health effects from exposure to products are contained in Material Data Safety Sheets and Safety Data Sheets. The Material Data Safety Sheets and Safety Data Sheets for Rust-Oleum's Aircraft Remover product are and have been compliant with applicable law and industry standards. The remaining averment set forth in Paragraph 135 are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

136. Admitted. By way of further response, while Material Data Safety Sheets now are referenced as Safety Data Sheets, the use of the former term instead of the latter term is of no substantive consequence.

137. Admitted.

138. Rust-Oleum admits that Paragraph 138 of the Complaint quotes a selected passage from Material Safety Data Sheets and Safety Data Sheets.

139. The averments set forth in Paragraph 139 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. The Material Data Safety Sheets and Safety Data Sheets for Rust-Oleum's Aircraft Remover product are and have been compliant with applicable law and industry standards.

140. Rust-Oleum admits that, as required by OSHA, Section 3 (Hazardous Identification) of Material Data Safety Sheets and Safety Data Sheets outlines health hazards presented by the chemical components of the product. The remaining averments set forth in Paragraph 140 of the Complaint attempt to characterize the regulatory requirements for the content of Material Data Safety Sheets and Safety Data Sheets. Rust-Oleum denies any such averments to the extent not expressly stated by such regulations.

141. Admitted.

142. Rust-Oleum admits that Paragraph 142 of the Complaint accurately quotes passages from Material Data Safety Sheets dated May 21, 2012, and October 4, 2012, for the Aircraft Remover product. Rust-Oleum denies that such Material Data Safety Sheets were the latest iteration of that document at the time of alleged use by Joshua Paul Atkins. The remaining averments set forth in Paragraph 142 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. The Material Data Safety Sheets and Safety Data Sheets for Rust-Oleum's Aircraft Remover product are and have been compliant with applicable law and industry standards.

143. Rust-Oleum admits that scientific journals and regulatory documents available to Rust-Oleum have referred to fatalities attributed to the inhalation of methylene chloride contained in paint strippers. Rust-Oleum denies having specific knowledge of such incidents or the circumstances involved with each such incident.

144. Admitted. The Material Data Safety Sheets and Safety Data Sheets for Rust-Oleum's Aircraft Remover product are and have been compliant with applicable law and industry standards.

145. Rust-Oleum admits that the Safety Data Sheet dated March 31, 2016, for the Aircraft Remover product uses the term dichloromethane and not methylene chloride. The remaining averments set forth in Paragraph 145 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. The aforesaid Safety Data Sheet is compliant with applicable law and industry standards. Further, the product label expressly states that the Aircraft Remover product contains methylene chloride.

146. Admitted.

147. Admitted.

148. Rust-Oleum admits that Paragraph 148 of the Complaint accurately quotes a passage from the Material Data Safety Sheet for the Aircraft Remover product dated March 31, 2016. The remaining averments set forth in Paragraph 148 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

149. The averment set forth in Paragraph 149 of the Complaint is generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

150. Admitted.

151. Rust-Oleum admits that it markets and sells paint strippers not containing methylene chloride within the United States. The remaining averments set forth in Paragraph 151 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

152. Rust-Oleum admits that it is aware of the hazards presented by the use of methylene chloride in paint stripper products. By product labelling and Material Data Safety

Sheets and Safety Data Sheets for Rust-Oleum's Aircraft Remover product, the hazards presented by methylene chloride were disclosed consistent with industry standards and regulatory requirements. The remaining averments set forth in Paragraph 152 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

153. Rust-Oleum admits that the Aircraft Remover product contains 85% methylene chloride by volume. The remaining averments set forth in Paragraph 153 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

154. The averments set forth in Paragraph 154 of the Complaint, inclusive of subparagraphs (a) through (p), are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

155. The averments set forth in Paragraph 155 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendant, Rust-Oleum Corporation, respectfully demands judgment in its favor and against Plaintiff, together with an award of costs of suit and such other relief as the Court deems appropriate.

Count III

156. Rust-Oleum incorporates by reference the preceding paragraphs of this Answer and New Matter as if fully set forth herein.

157. The averments set forth in Paragraph 157 of the Complaint assert conclusions of law, to which no response is required by the Pennsylvania Rules of Civil Procedure. To the extent a response is required, the averments set forth in Paragraph 157 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure to the extent not consistent with applicable law.

158. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 158 of the Complaint. Accordingly, the averments set forth in Paragraph 158 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

159. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 159 of the Complaint. Accordingly, the averments set forth in Paragraph 159 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

160. After reasonable investigation, Rust-Oleum is without knowledge or information sufficient to affirm or deny the truth of the averments set forth in Paragraph 160 of the Complaint. Accordingly, the averments set forth in Paragraph 160 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

161. The averments set forth in Paragraph 161 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

162. Admitted.

163. The averments set forth in Paragraph 163 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

164. The averments set forth in Paragraph 164 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

165. The averments set forth in Paragraph 165 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

166. The averments set forth in Paragraph 166 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

167. The averments set forth in Paragraph 167 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendant, Rust-Oleum Corporation, respectfully demands judgment in its favor and against Plaintiff, together with an award of costs of suit and such other relief as the Court deems appropriate.

Count IV

168. Rust-Oleum incorporates by reference the preceding paragraphs of this Answer and New Matter as if fully set forth herein.

169. The averments set forth in Paragraph 169 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

170. The averments set forth in Paragraph 170 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

171. The averments set forth in Paragraph 171 of the Complaint assert conclusions of law, to which no response is required by the Pennsylvania Rules of Civil Procedure. To the extent a response is required, the averments set forth in Paragraph 171 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure to the extent not consistent with applicable law.

172. The averments set forth in Paragraph 172 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendant, Rust-Oleum Corporation, respectfully demands judgment in its favor and against Plaintiff, together with an award of costs of suit and such other relief as the Court deems appropriate.

Count V

173. Rust-Oleum incorporates by reference the preceding paragraphs of this Answer and New Matter as if fully set forth herein.

174. The averments set forth in Paragraph 174 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

175. The averments set forth in Paragraph 175 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

176. The averments set forth in Paragraph 176 of the Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendant, Rust-Oleum Corporation, respectfully demands judgment in its favor and against Plaintiff, together with an award of costs of suit and such other relief as the Court deems appropriate.

New Matter

By way of further response and defense to the Complaint, Defendant, Rust-Oleum Corporation, avers the following new matter:

177. The Complaint fails to state claims against Rust-Oleum upon which relief can be granted.

178. The decedent, Joshua Paul Atkins, appreciated and understood risks associated with the use, if any, of the Aircraft Remover product. With such knowledge, Joshua Paul Atkins continued to use the product in such a manner as to continue to expose himself to any alleged risks. As a result of Joshua Paul Atkins' own assumption of risk, Plaintiff's recovery, if any, should be limited or barred.

179. Plaintiff's decedent failed to use the Aircraft Remover product in a manner consistent with the directions and warnings set forth on the product label.

180. The decedent, Joshua Paul Atkins, was contributorily negligent in his use of the Aircraft Remover product. Rust-Oleum asserts as an affirmative defense the relevant provisions of the Pennsylvania Comparative Negligence Act.

181. The Aircraft Remover product used by the decedent, Joshua Paul Atkins, was accompanied by adequate warnings and instructions.

182. No act or omission of action by Rust-Oleum proximately caused any of the decedent, Joshua Paul Atkins' fatality.

183. The decedent, Joshua Paul Atkins' fatality was caused by the actions or omissions of others, and/or intervening and superseding acts or omissions, for which Rust-Oleum is not responsible.

184. The decedent, Joshua Paul Atkins, failed to take reasonable, adequate and available precautions to protect himself while using the Aircraft Remover product.

185. The death of Joshua Paul Atkins was solely the result of his voluntary disregard of open and obvious dangers, which could be readily determined through common knowledge and experience.

186. The decedent, Joshua Paul Atkins, did not use the Aircraft Remover product in accordance with the warnings and instructions set forth on the product label.

187. The Aircraft Remover label instructed users to "[u]se only with adequate ventilation." The decedent, Joshua Paul Atkins, did not use the product with adequate ventilation.

188. The Aircraft Remover label instructed users to “[e]nsure fresh air entry during application and drying.” The decedent, Joshua Paul Atkins, did not use the product in a manner that ensured fresh air entry during application and/or drying.

189. The Aircraft Remover label instructed users to “[u]se this product outdoors, if possible” and “[i]f you must use indoors, open all windows and doors or use other means to ensure fresh air movement during application and drying.” The decedent, Joshua Paul Atkins, used the product indoors and without implementing means to ensure air movement during application and/or drying.

190. The decedent, Joshua Paul Atkins, failed to wear proper safety equipment and/or take other reasonable safety measures while using the Aircraft Remover product.

191. At all relevant times, the Aircraft Remover product, its labeling, Material Data Safety Sheets, Safety Data Sheets and Technical Data Sheet conformed to industry standards, applicable governmental rules and regulations and the state of scientific and technological knowledge at the time such product was marketed.

192. The methods, standards and techniques of designing, manufacturing or selling of the Aircraft Remover product by Rust-Oleum were performed in conformity with the general recognized state of the art and industry standards existing at the time such products were manufactured, designed and/or sold by Rust-Oleum and placed into the stream of commerce.

193. Rust-Oleum’s Aircraft Remover product was labeled with sufficient warnings, reasonably understood by a consumer exercising reasonable care, compliant with industry standards, including those guidelines published by the American Coatings Association.

194. The Aircraft Remover product was designed, manufactured, labeled and/or sold in a manner that complied with all applicable federal regulatory requirements.

195. The warnings provided with the Aircraft Remover product were adequate as a matter of law.

196. Plaintiff's claims and theories of liability are pre-empted, in whole or in part, by applicable federal regulations and standards.

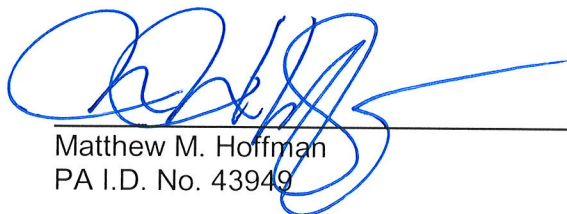
197. To the extent as may be established through discovery in this matter, Rust-Oleum avers that the decedent, Joshua Paul Atkins, death was attributable to pre-existing medical conditions unrelated to the use of the Aircraft Remover product.

198. Rust-Oleum adopts all defenses available to it under Section 402A of the Restatement (Second) of Torts as affirmative defenses to Plaintiff's claims.

199. To the extent as may be established through discovery in this matter, Rust-Oleum asserts all affirmative defenses listed in Rule 1030 of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendant, Rust-Oleum Corporation, respectfully demands judgment in its favor and against Plaintiff, together with an award of costs of suit and such other relief as the Court deems appropriate.

Respectfully submitted,



Matthew M. Hoffman
PA I.D. No. 43949

TUCKER ARENSBERG, P.C.
1500 One PPG Place
Pittsburgh, PA 15222
(412) 594-3910

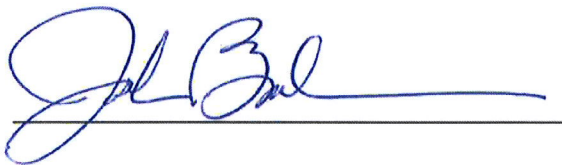
Attorneys for Defendant, Rust-Oleum Corporation

Dated: October 9, 2018

VERIFICATION

I, JOHN BRODERSEN, on behalf of Rust-Oleum Corporation, have read the foregoing Answer and New Matter as prepared by our counsel of record, and state that the statements contained therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.



Dated: October 8, 2018

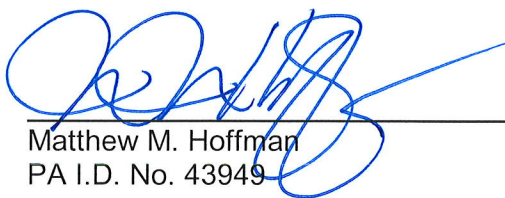
TADMS:5027533-2 022156-183766

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer and New Matter has been forwarded to counsel/parties of record via first class mail, postage pre-paid, this 9th day of October 2018.

Martin K. Brigham, Esquire
Raynes Lawn Hehmeyer
1845 Walnut Street, 20th Floor
Philadelphia, PA 19103
Attorney for Plaintiff, Lauren Atkins

Respectfully submitted,



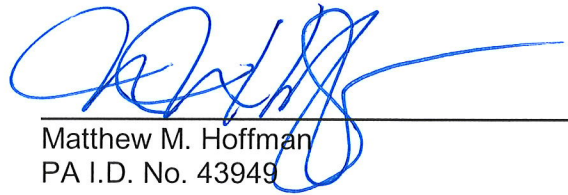
Matthew M. Hoffman
PA I.D. No. 43949

TUCKER ARENSBERG, P.C.
1500 One PPG Place
Pittsburgh, PA 15222
(412) 594-3910

Attorney for Defendant, Rust-Oleum Corporation

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the United 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.



Matthew M. Hoffman
PA I.D. No. 43949

TUCKER ARENSBERG, P.C.
1500 One PPG Place
Pittsburgh, PA 15222
(412) 594-3910

Attorneys for Defendant,
Rust-Oleum Corporation