

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

JEROME ZETZSCHE and CAROL ZETZSCHE,
husband and wife,

Plaintiffs,

v.

ABB, INC., et al.,

Defendants.

NO. 21-2-14455-8 SEA

**DEFENDANT LONE STAR
INDUSTRIES, INC.'S ANSWER AND
AFFIRMATIVE DEFENSES**

Defendant Lone Star Industries, Inc. ("Lone Star"), by its attorneys of record, Foley & Mansfield, PLLP, answers the Complaint for Personal Injuries ("Complaint") as follows, with headings corresponding to those in the Complaint.

I. PARTIES

The first paragraph is denied for lack of knowledge or information.

Answering the second paragraph, Lone Star admits it is a corporation and at some time it manufactured, sold, or distributed products which may have been used in conjunction with asbestos-containing components. Denied as to other defendants or their predecessors-in-interest for lack of knowledge of information. Otherwise denied.

1 **II. JURISDICTION**

2 This paragraph asserts legal conclusions and does not requires an answer by Lone Star. To
3 the extent an answer is required, denied as to Lone Star and otherwise denied for lack of knowledge
4 or information.

5 **III. FACTUAL ALLEGATIONS**

6 These sections are denied as to Lone Star and otherwise denied for lack of knowledge or
7 information.

8 **IV. LIABILITY**

9 The first paragraph is denied as to Lone Star and otherwise denied for lack of knowledge
10 or information.

11 The second paragraph is denied for lack of knowledge or information.

12 **V. DAMAGES**

13 Regarding the alleged legal conclusions, no response is required. To the extent a response
14 is required, denied as to Lone Star. Otherwise denied for lack of knowledge or information.

15 **VI. PRAYER FOR RELIEF**

16 Regarding the Plaintiffs’ prayer for relief, no response is required. To the extent a response
17 is required, denied including all subparts.

18 **GENERAL DENIAL**

19 Lone Star denies each and every allegation not expressly admitted herein and denies it is
20 liable to Plaintiffs on any basis or in any amount.

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1 **LONE STAR'S AFFIRMATIVE DEFENSES**

2 BY WAY OF FURTHER ANSWER, and as affirmative defenses to the Complaint, Lone
3 Star alleges as follows:

4 1. Plaintiffs' Complaint, in whole or in part, fails to state a claim against Lone Star
5 upon which relief can be granted.

6 2. Plaintiffs' claims are barred by the applicable statute of limitations or statute of
7 repose.

8 3. Plaintiffs' claims may be barred by the doctrine of laches, waiver, or estoppel.

9 4. Plaintiffs may lack standing to assert some or all of the claims asserted in the
10 Complaint.

11 5. Plaintiffs' injuries and damages, if any, were caused or contributed to by Plaintiffs'
12 own negligence or fault, or the negligence or fault of other persons and entities in privity with
13 Plaintiffs. Therefore, recovery against Lone Star, if any, is limited, barred, or diminished under
14 applicable law.

15 6. Plaintiffs' claims are barred or preempted, in whole or in part, by federal law,
16 statutes, and regulations.

17 7. No act or omission of Lone Star was the proximate cause of the harm of which
18 Plaintiffs complain.

19 8. If Plaintiffs sustained any injury or damage as claimed in the Complaint, such injury
20 or damage was solely, directly, and proximately caused by conditions, circumstances, or conduct
21 of others beyond the control of Lone Star.

22 9. Plaintiffs' claims are barred by the doctrine of the assumption of the risk.

23 10. Plaintiffs' claims against Lone Star may be barred because Plaintiffs' alleged
24 damages were proximately caused by intervening or superseding events attributable to other
25 persons, entities, or corporations other than Lone Star.

1 11. The plans or designs, method or technique of manufacturing, assembling, testing,
2 labeling, and sale of any product alleged to have caused all or part of Plaintiffs' alleged damages
3 conformed with the state of the art at the time any such product was designed, manufactured,
4 assembled, tested, labeled, or sold by Lone Star according to generally recognized and prevailing
5 standards and in conformance with the statutes, regulations, and requirements that governed the
6 product or products at the time of design, manufacture, assembly, testing, labeling, and sale.

7 12. The actions of Lone Star were in conformity with the state of the medical,
8 industrial, and scientific arts, so there was no duty to warn Plaintiffs. To the extent any such duty
9 arose, Lone Star provided adequate warnings, labels, and/or instructions concerning any product
10 in question. If those warnings, labels, or instructions were not made available or heeded, it is the
11 fault of others and not Lone Star.

12 13. Plaintiffs' claims may be barred in whole or in part because the Lone Star products,
13 if any, alleged to have injured Plaintiffs were made in compliance with, and supplied according to,
14 mandatory government orders and specifications.

15 14. Plaintiffs may have failed to mitigate their damages and may have failed to protect
16 themselves from avoidable consequences.

17 15. Some or all of the damages sought by Plaintiffs, including but not limited to
18 punitive damages, are not recoverable under applicable law.

19 16. In the event there is a finding of damages for Plaintiffs, any award or judgment
20 entered in favor of Plaintiffs must be reduced or offset by the amount of any benefits, settlements,
21 or payments Plaintiffs may have received, or are entitled to receive, from any source.

22 17. Plaintiffs' claims may be barred by the learned intermediary, sophisticated user, or
23 sophisticated purchaser doctrines.

24 18. Lone Star neither owed nor breached any duties to Plaintiffs.

25 19. At all relevant times, the knowledge of other persons and business entities, and the

1 ability of such persons and business entities to take actions to prevent the injuries complained of
2 was superior to that of Lone Star and, therefore, if there was a duty to protect Plaintiffs from
3 allegedly foreseeable dangers associated with asbestos, the duty was on those other persons and
4 business entities and not on Lone Star.

5 20. Plaintiffs' claims, in whole or in part, are barred by the doctrines of collateral
6 estoppel or res judicata.

7 21. Plaintiffs have failed to join necessary or indispensable parties in this action.

8 22. Any exposure of Plaintiffs to Lone Star products or services, which Lone Star
9 expressly denies, was not a substantial exposure and was so minimal as to be insufficient to
10 establish a reasonable degree of probability that its products or premises caused the claimed
11 injuries.

12 23. No warranties, express or implied, existed between Plaintiffs and Lone Star.

13 24. If any of the products used on any premises posed a danger, which Lone Star denies,
14 then any unavoidable risks of using the product were outnumbered by the benefits of its use.

15 25. Plaintiffs' claims against Lone Star are barred in whole or in part to the extent that
16 the products or services that allegedly injured Plaintiffs (which Lone Star denies occurred)
17 complied with federal, state, city and/or local statutes, ordinances, regulations, or specifications.

18 26. Any asbestos products manufactured, supplied, furnished, sold, or used by, or at
19 any premises of Lone Star (which Lone Star denies occurred), were, at the time they were
20 manufactured, furnished, supplied, sold, or used in compliance with specific mandatory
21 government contract specifications, and such compliance is a complete bar to Plaintiffs' claims
22 against Lone Star.

23 27. The Court lacks personal jurisdiction over Lone Star.

24 28. Pursuant to CR 9(k)(1), Lone Star gives notice it may rely on maritime law.

25 29. Lone Star incorporates by reference any additional defenses asserted by other

1 defendants to the extent such defenses are applicable to Plaintiffs' claims against Lone Star.

2 30. Lone Star reserves the right to add those affirmative defenses it deems necessary
3 to its defense during or upon the conclusion of investigation or discovery.

4 **LONE STAR'S PRAYER FOR RELIEF**

5 WHEREFORE, Lone Star requests the following relief:

6 A. Plaintiffs' Complaint against Lone Star be dismissed with prejudice;

7 B. Plaintiffs recover nothing from Lone Star;

8 C. Lone Star be awarded its costs and disbursements, including reasonable attorneys'
9 fees, under RCW 4.28.185, RCW 4.84, and as otherwise allowable under law.

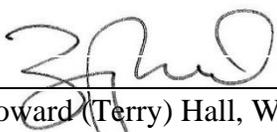
10 D. In the event Lone Star is found liable to Plaintiffs, which liability is expressly
11 denied, Lone Star be awarded judgment, either in this matter or later in a separate trial or action,
12 as elected, against one or more of the other defendants named or to be named for contribution or
13 indemnification, including Lone Star's costs and attorneys' fees; and

14 E. Lone Star is granted such other and further relief as the Court may deem just and
15 equitable.

16 DATED this 13th day of December, 2021.

17 FOLEY & MANSFIELD, PLLP\

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19 BY:


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CERTIFICATE OF SERVICE

I, Traci Clark, declare that I am employed by the law firm of Foley & Mansfield, PLLP, 999 Third Avenue, Suite 3760, Seattle, King County, Washington; that I am over 18 years of age and not a party to this action.

(By E-Service) I hereby certify that on this date I electronically filed the foregoing document with the King County Superior Court using the CM/ECF system, and electronically served all parties in accordance with King County Local General Rule 30(b)(4)(B). In accordance with King County’s E-Service feature, the Clerk of Court will send e-mail notifications of such filing to the following attorneys:

(By E-mail) I caused the foregoing document(s) to be delivered via e-mail to firms and persons whose email addresses are listed next to the name of the party represented as listed below:

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1 I declare under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct.

3 Executed on the 13th day of December, 2021.

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6 Traci Clark, Legal Assistant

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