

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MARK NEUSER and ARLAN and MARCIA
HINKELMANN, individuals on behalf of
themselves and all other Wisconsin residents
and entities similarly situated,

Plaintiffs,

CASE NO. 06-C-645-S

vs.

CARRIER CORPORATION, a Delaware
corporation,

Defendant.

THIRD AMENDED COMPLAINT

COME NOW Plaintiffs Mark Neuser and Arlan and Marcia Hinkelmann, on behalf of themselves and all other Wisconsin residents and entities similarly situated, by and through their attorneys, Lief Cabraser Heimann & Bernstein LLP, Cullen Weston Pines & Bach LLP, Tousley Brain Stephens PLLC, and Edwards & Hagen PS, and as a complaint against the Defendant Carrier Corporation ("Carrier") allege the following:

INTRODUCTION

1. Plaintiffs Mark Neuser and Arlan and Marcia Hinkelmann bring this action on behalf of themselves and all similarly-situated individuals and entities in the State of Wisconsin who currently own Carrier 90% high-efficiency condensing furnaces equipped with PPL-laminated secondary heat exchangers ("CHXs"), and former owners of such furnaces whose furnaces experienced CHX failure.

2. Starting in December 1988, and for the purpose of reducing its costs and thereby maximizing its profits, Carrier began using polypropylene-laminated (“PPL”) mild steel for its furnaces’ CHXs. Carrier switched to PPL-laminated steel despite the fact that the industry standard was (and still is) to use stainless steel parts to prevent corrosion.

3. Based on pre-market testing that Carrier began in 1983, Carrier knew in 1985 – three years before it began selling them – that the PPL-laminated CHXs would not last as long as the warranted life nor as long as a CHX manufactured with stainless steel.

4. Unlike disposable goods like cameras, Carrier’s furnaces are durable goods that consumers expect to last at least 20 years, the industry standard. Carrier knows and has known this fact since before it sold the first high-efficiency condensing furnace.

5. Carrier knew and intentionally concealed from everyone that its PPL-laminated CHXs and other related furnace parts are inferior and fail prematurely, damaging other components of the furnaces, and ultimately causing failure of the furnaces and an increased risk of carbon monoxide exposure. To this day, Carrier continues to affirmatively conceal from its dealers, distributors, and the public, these material facts.

6. As a result of Carrier’s misconduct, Plaintiffs and all others similarly situated own furnaces that are defective and have already failed or are in the process of failing prematurely, or owned furnaces that have already failed prematurely, requiring them to pay out of pocket to repair or replace the furnaces.

PARTIES

7. Plaintiff Mark Neuser is an adult resident of the State of Wisconsin who resides in Dane County, Wisconsin.

8. Plaintiff Arlan D. Hinkelmann is an adult resident of the State of Wisconsin who resides in Clark County, Wisconsin.

9. Plaintiff Marcia Hinkelmann is an adult resident of the State of Wisconsin who resides in Clark County, Wisconsin.

10. Defendant Carrier Corporation is a Delaware corporation headquartered in Connecticut that does business in the State of Wisconsin. Carrier, operating as Bryant, is the largest furnace manufacturer in the U.S. It manufactured the high-efficiency condensing furnaces used by Plaintiffs and the putative Class Members.

JURISDICTION

11. This is a proposed class action. Members of the proposed plaintiffs' Class are residents of Wisconsin, a state different from the home state of Carrier.

12. On information and belief, the aggregate claims of individual class members exceed \$5,000,000, exclusive of interest and costs. As such, jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(a).

VENUE

13. Carrier, through its business of selling, marketing, and warranting its high-efficiency condensing furnaces, has established sufficient contacts in this district such that it is subject to personal jurisdiction here. Pursuant to 28 U.S.C. § 1391(c), therefore, Carrier is deemed to reside in this district.

14. Carrier has sold more than 300,000 furnaces to Wisconsin residents and entities.

15. Thus, a substantial part of the events giving rise to these claims and a substantial part of the property that is the subject of this action are situated in this district. As such, venue is proper in this Court pursuant to 28 U.S.C. § 1391(a).

APPLICABLE LAW

16. Plaintiffs, Wisconsin residents, seek contract damages or equitable relief on behalf of themselves and all other Wisconsin residents and entities similarly situated under the law of the State of Wisconsin, where their claims arose. Wisconsin law presumptively applies to all claims in this action, because the non-forum contacts in this case are not of greater significance than the Wisconsin contacts. Further, the application of Wisconsin law advances Wisconsin's governmental interests. Wisconsin's interest in this action – of protecting the rights and interests

of Wisconsin residents against corporations doing business here – has greater significance than that of any other state. Application of Wisconsin law also promotes the predictability of results, maintenance of interstate order, and simplification of the judicial task.

FACTS

A. Plaintiff Neuser's Experience

17. Plaintiff Neuser purchased his home, equipped with a Carrier high-efficiency condensing furnace, model number 58SXC080-GC, in 2000. The furnace was installed sometime between December 1993 and April 1994, when the home was originally constructed.

18. On April 1, 2006, Plaintiff Neuser discovered that the furnace's CHX had failed after his newly-installed carbon monoxide detector sounded an alarm. The carbon monoxide detector recorded several readings of carbon monoxide in the Neuser home on that day; the highest recording was 73 parts per million ("ppm"). That same day, Madison Gas & Electric confirmed high levels of carbon monoxide at a level of 40 ppm. Also on that day, a technician from a local HVAC company (Harker Heating & Cooling, Inc.) inspected the furnace and confirmed the failure of the heat exchanger.

19. Plaintiff Neuser had no sales contract with Harker Heating & Cooling, Inc. ("Harker"). The Harker technician tending to Plaintiff Neuser's furnace, and acting as an agent of Carrier, advised Plaintiff Neuser that he had the option of either paying the significant repair costs associated with diagnosing and replacing the defective CHX, or purchasing a new furnace. Plaintiff Neuser elected to purchase a new furnace, manufactured by Carrier, at a cost of \$3,850.00. It was not until April 3, 2006, that the local Carrier dealer was able to come back to the house to replace the furnace.

20. The CHX in Plaintiff Neuser's furnace was expressly warranted by Carrier for the lifetime of the original purchaser and for 20 years from date of installation for subsequent purchasers. Because Plaintiff Neuser was a subsequent purchaser, Carrier warranted his CHX for

20 years from date of installation. Instead, it failed after only 12 years and without warning, endangering the health of Plaintiff Neuser's family.

21. Plaintiff Neuser presented his failed furnace to Carrier for repair under his warranty. Carrier's response to the Neuser family's predicament was woefully inadequate: some days after Plaintiff Neuser's spouse made a written complaint via Carrier's website concerning the events of April 1, 2006, a Carrier representative informed the Neusers that a \$400.00 rebate was available to them. Plaintiff Neuser submitted a claim to Carrier, which eventually provided a \$400.00 rebate towards the cost of the new furnace.

22. Prior to the purchase of his home, Plaintiff Neuser was aware that the furnace was a Carrier brand furnace and believed the furnace was warranted by Carrier.

23. At the time of purchase, Plaintiff Neuser was under the mistaken belief that the furnace installed in his home would last for 20 years, was not defective, and would not put his family at an increased risk of carbon monoxide exposure. If Plaintiff Neuser had known his furnace was defective, would not last 20 years, would put his family at an increased risk of carbon monoxide exposure, or that he would be required to pay \$3,850.00 for replacement of the furnace after only a few years, Plaintiff Neuser would have negotiated a lower purchase price for his family home.

24. Plaintiff Neuser justifiably and reasonably relied on Carrier's failure to disclose material facts about his furnace, and he has been harmed in that he paid out of pocket to replace it and install its replacement.

25. Experts hired by Plaintiff Neuser's counsel, in the presence of Carrier's counsel and two Carrier employees, dismantled Plaintiff Neuser's furnace and inspected the CHX. That inspection revealed corrosion on many of the cells contained in the CHX, including perforations of the outside wall. The corrosion found on Plaintiff Neuser's CHX is of the type exhibited by all of the furnaces at issue.

26. Plaintiff Neuser's new (replacement) Carrier furnace, Model Number 58MVB 080, is also defective in design and, based on the mechanism of failure and the data Plaintiffs have uncovered evidencing extremely high failure rates, has already begun the failure process.

27. At the time he purchased his replacement furnace, Plaintiff Neuser once again was under the mistaken belief that his new furnace would last for 20 years, was not defective, and would not put his family at an increased risk of carbon monoxide exposure. Plaintiff Neuser, however, like all Class members, is reasonably certain to suffer furnace failure well in advance of the warranted and expected life of his new furnace and therefore will incur additional expenses as a result of the replacement of his second failed furnace.

B. Plaintiffs Arlan and Marcia Hinkelmann's Experience

28. Plaintiffs Arlan and Marcia Hinkelmann purchased their Carrier high-efficiency condensing furnace, Model Number 58MVP, on June 6, 1994, from Darling Heating, an authorized Carrier dealer. Darling Heating was acting as an agent of Carrier. The Hinkelmans had no sales contract with Darling Heating. Prior to the purchase of their furnace in 1994, the Hinkelmans had used an oil burner to heat their family home.

29. At the time they purchased their Carrier furnace they were under the mistaken belief that it would last 20 years, was free from defects, and would not put them at an increased risk of carbon monoxide exposure. Carrier, however, knew before the Hinkelmans bought their furnace that the product they had purchased had a defective design that would cause it to corrode well before its 20-year useful life had expired and put their family at an increased risk of carbon monoxide exposure.

30. If the Hinkelmans had known their furnace was defective, would put their family at an increased risk of carbon monoxide exposure, or that they would be required to pay \$3,350.00 for replacement of the furnace after only a few years, they would not have purchased the furnace or would have paid less for it.

31. After six years of operation, in 2000, the Hinkelmanns' furnace's variable speed inducer was replaced by Custom Heating and Cooling, Inc. ("Custom Heating"). The Hinkelmanns had no sales contract with Custom Heating and Cooling, Inc., which was acting as an agent of Carrier.

32. In the Fall of 2006, Plaintiff Marcia Hinkelmann noticed a pungent smell outside of their house, near the furnace's vents. On October 31, 2006, the Hinkelmanns' furnace technician from Custom Heating, acting as an agent of Carrier, informed them that they would need to have the furnace's CHX replaced. Soon thereafter, the Hinkelmanns' furnace stopped heating their home to satisfactory temperatures. At one point, the furnace could only warm the house to 51°F.

33. Given the furnace's repeated problems and the high labor cost associated with replacing those parts, the Hinkelmanns opted instead to buy a new furnace made by a different manufacturer. On October 15, 2006, the Hinkelmanns purchased a Trane 2-stage variable furnace from Northern Indoor Comfort Systems at a total cost of \$3,350.00.

34. The CHX in the Hinkelmanns' furnace was warranted by Carrier for the lifetime of the original purchaser, and the Hinkelmanns were aware of that material fact prior to the purchase of their furnace. The Hinkelmanns were not aware that the furnace was defective at the time they purchased it. They justifiably and reasonably relied on Carrier's failure to disclose the defect which failure induced them to purchase their furnace. Ultimately, despite the fact that Carrier warranted the CHX for life, it failed after only 12 years.

35. The Hinkelmanns have incurred damages in that they were fraudulently induced to purchase a furnace with a latent defect of which they were not aware. As a result, their furnace failed prematurely, and they have paid out of pocket to replace it.

36. The corrosion found on the Hinkelmanns' CHX is of the type exhibited by all of the furnaces at issue.

