

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

BROCK SIMPSON, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. 4:17-cv-00731-NKL  
 )  
 MAGNUM PIERING, INC., and )  
 DOE ENTITIES/INDIVIDUALS 1-5, )  
 )  
 Defendants. )

**DEFENDANT MAGNUM PIERING, INC.’S AMENDED ANSWER TO PLAINTIFF’S  
PETITION**

COMES NOW Magnum Piering, Inc. (hereinafter “Defendant Magnum”), by and through undersigned counsel, and for its Amended Answer to Plaintiff’s Petition, states, alleges, and avers as follows:

1. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 1 of Plaintiff’s Petition and, therefore, denies the same.
2. Defendant Magnum admits that it has its principal place of business outside of Missouri and that it maintains a registered agent, Thomas E. Martin; Defendant Magnum denies all remaining allegations in paragraph 2 of Plaintiff’s Petition except those expressly admitted herein.
3. Defendant Magnum denies the allegations in paragraph 3 of Plaintiff’s Petition.
4. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 4 of Plaintiff’s Petition and, therefore, denies the same.

5. Defendant Magnum denies the allegations in paragraph 5 of Plaintiff's Petition.

6. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 6 of Plaintiff's Petition and, therefore, denies the same.

### **FACTUAL ALLEGATIONS**

7. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 7 of Plaintiff's Petition and, therefore, denies the same.

8. Defendant denies the allegations that it manufactured and/or distributed Magnum products that directly caused or directly contributed to Plaintiff's alleged injury; Defendant Magnum is without sufficient information or knowledge to either admit or deny the remaining allegations contained in paragraph 8 of Plaintiff's Petition and, therefore, denies the same.

9. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 9 of Plaintiff's Petition and, therefore, denies the same.

10. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 10 of Plaintiff's Petition and, therefore, denies the same.

11. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 11 of Plaintiff's Petition and, therefore, denies the same.

12. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 12 of Plaintiff's Petition and, therefore, denies the same.

13. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 13 of Plaintiff's Petition and, therefore, denies the same.

14. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 14 of Plaintiff's Petition and, therefore, denies the same.

15. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 15 of Plaintiff's Petition and, therefore, denies the same.

16. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 16 of Plaintiff's Petition and, therefore, denies the same.

17. Defendant Magnum denies the allegations in paragraph 17 of Plaintiff's Petition.

18. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 18 of Plaintiff's Petition and, therefore, denies the same.

19. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 19 of Plaintiff's Petition and, therefore, denies the same.

20. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 20 of Plaintiff's Petition and, therefore, denies the same.

21. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 21 of Plaintiff's Petition and, therefore, denies the same.

22. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 22 of Plaintiff's Petition and, therefore, denies the same.

23. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 23 of Plaintiff's Petition and, therefore, denies the same.

24. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 24 of Plaintiff's Petition and, therefore, denies the same.

25. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 25 of Plaintiff's Petition and, therefore, denies the same.

26. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 26 of Plaintiff's Petition and, therefore, denies the same.

27. Defendant Magnum is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 27 of Plaintiff's Petition and, therefore, denies the same.

28. Defendant Magnum denies the allegations in paragraph 28 of Plaintiff's Petition.

29. Defendant Magnum denies the allegations in paragraph 29 of Plaintiff's Petition.

30. Defendant Magnum denies the allegations in paragraph 30 of Plaintiff's Petition.

31. Defendant Magnum denies the allegations in paragraph 31 of Plaintiff's Petition, including its subparts.

**COUNT I**  
**STRICT LIABILITY – DEFECTIVE PRODUCT**

32. In answer to Paragraph 32 of Plaintiff's Petition, Defendant Magnum incorporates by this reference, as though set forth fully herein its answers set forth in paragraphs 1 through 31 above.

33. Defendant denies the allegations in paragraph 33 of Plaintiff's Petition.

34. Defendant denies the allegations in paragraph 34 of Plaintiff's Petition.

35. Defendant denies the allegations in paragraph 35 of Plaintiff's Petition.

36. Defendant denies the allegations in paragraph 36 of Plaintiff's Petition.

37. Defendant denies the allegations in paragraph 37 of Plaintiff's Petition.

38. Defendant denies the allegations in paragraph 38 of Plaintiff's Petition.

WHEREFORE, having fully responded to this Count of Plaintiff's Petition, Defendant Magnum Piering, Inc. respectfully prays for an Order of this Court dismissing Plaintiff's claims asserted therein against it, for costs herein incurred, and for such other and further relief as the Court deems just and proper.

**COUNT II**  
**NEGLIGENCE**

39. In answer to paragraph 39 of Plaintiff's Petition, Defendant Magnum incorporates by this reference, as though set forth fully herein its answers set forth in paragraphs 1 through 38 above.

40. Defendant denies the allegations in paragraph 40 of Plaintiff's Petition, including its subparts.

41. Defendant denies the allegations in paragraph 41 of Plaintiff's Petition.

WHEREFORE, having fully responded to Plaintiff's Petition, Defendant Magnum Piering, Inc. respectfully prays for an Order of this Court dismissing Plaintiff's claims against it, for costs herein incurred, and for such other and further relief as the Court deems just and proper.

**AFFIRMATIVE DEFENSES**

1. Defendant Magnum Piering, Inc. realleges and incorporates by reference its responses to and denials of allegations contained in paragraphs 1 through 41 as factual support for each affirmative defense stated below.

2. Plaintiff's Petition fails to state a cause of action upon which relief may be granted against Defendant Magnum Piering, Inc. (hereinafter "Defendant Magnum").

3. If Plaintiff sustained any damages, which Defendant Magnum denies, then Plaintiff's damages are limited in accordance with § 537.090 RSMo.

4. Plaintiff failed to use the product(s) as reasonably anticipated by the manufacturer.

5. Plaintiff used the product(s) for a purpose not intended by the manufacturer.

6. Plaintiff knew and appreciated the alleged danger in the use of the product(s).

7. Plaintiff's exposure to such alleged danger was voluntary and unreasonable.

8. Plaintiff's conduct directly caused or directly contributed to cause any damage Plaintiff may have sustained.

9. Plaintiff unreasonably failed to appreciate the danger involved in the use of the product or the consequences thereof and the unreasonable exposure to said danger.

10. Plaintiff failed to undertake the necessary precautions that a reasonably careful user of the product(s) would take to protect himself against dangers which he could reasonably appreciate under the same or similar circumstances.

11. Plaintiff failed to mitigate his damages and failed to use ordinary care, and therefore, allegedly sustained damage that would not have occurred otherwise.

12. Plaintiff assumed the risk when using the alleged product(s).

13. The alleged dangerous nature of the product(s) was not known or could not reasonably be discovered at the time the product was placed into the stream of commerce. *See* § 537.764 RSMo

14. Any damages sustained by Plaintiff, which damages are specifically denied, were caused by or contributed to be caused by the fault of other parties and defendants to the above-captioned litigation, as set forth in the Plaintiff's Petition, and not by Defendant Magnum, and/or by non-parties over whom Defendant Magnum had no control or right to control, whose fault, when compared, should serve to reduce or bar any recovery from Defendant Magnum in this action. *See* § 537.765 RSMo; § 537.060.

15. If Plaintiff sustained any damages, Defendant Magnum's liability, if any, should be compared with the liability of all other persons or entities liable, including all other defendants named in this lawsuit. *See* § 537.765 RSMo; § 537.060.

16. Defendant Magnum states further and for affirmative defense, it is entitled to the apportionment and allocation of fault between, and among, all appropriate parties, individuals, and entities as directed by Missouri law, including, but not limited to Plaintiffs, defendants, and any other persons or entities who are or may be joined as parties in this case and further state that they are entitled to have such apportionment and allocation of fault among all parties, individuals and entities whom the evidence indicates may be liable, if anyone, and that each party, individual and entity be apportioned and allocated their respective percentage of fault by the trier of fact. *See* § 537.765 RSMo; § 537.060.

17. In the event Defendant Magnum is found to be at fault by the trier of fact, which fault is denied, Defendant Magnum denies joint and several liability for any of Plaintiff's damages as set forth under § 537.067 RSMo.; in such circumstance, Defendant Magnum is only responsible for that percentage of fault apportioned to it by the trier of fact.

18. Pursuant to RSMo. Section 537.067, if Defendant Magnum is found to be less than 51 percent at fault, it shall only be responsible for the percentage of the judgment for which it is determined to be responsible by the trier of fact, and Defendant Magnum will not be liable for the fault of another defendant, plaintiff, third-party plaintiff, or third-party defendant or for payment of the proportionate share of another such party.

19. Pursuant to RSMO, Section 537.060, Defendant Magnum is entitled to a set-off for the amount of any settlement between Plaintiff and other persons or entities, and Defendant Magnum is entitled to a set off for the amount of any settlement between Plaintiff and other persons, entities, or parties to this lawsuit.

20. By way of further answer and as an affirmative defense, Defendant Magnum states that Plaintiff's alleged damages were caused by abnormal or misuse of its alleged products.



21. Defendant Magnum states that it intends to rely upon the provisions of RSMo. § 490.715 limiting economic damages for medical expenses to the amounts actually paid to a healthcare provider; Plaintiff's damages, if any, are subject to any applicable credit or set off or allowance or accommodation for any medical costs that were credited, written off, forgiven, or otherwise extinguished.

22. Plaintiff's Petition is barred by the applicable statutes of limitations, including but not limited to RSMo Section 516.120 and RSMo 537.100, and/or statutes of repose, including, but not limited to RSMo Section 516.097.

23. Defendant Magnum denies any allegation contained in the Petition that is not specifically admitted herein.

24. Defendant Magnum reserves the right to amend its Answer to allege any additional defense that may be revealed during the course of discovery.

25. Plaintiff's alleged injuries and damages were due to Plaintiff's own negligence or caused in whole or part by other non-parties that Defendant Magnum has no control over. Specifically, the following actions were taken:

- a. Plaintiff stood in front of the RAM when he was warned that doing so was dangerous by BJ Dwyer, or other Defendant Magnum employees;
- b. Plaintiff, or other non-parties, failed to use a safety bolt on the RAM and/or other machinery or parts;
- c. Plaintiff, or other non-parties, failed to maintain and/or utilize a pressure log that could have prevented the accident;
- d. Plaintiff, or other non-parties, used the operating system in an unsafe manner, specifically, Plaintiff, or other non-parties, failed to: properly align the RAM

and bracket, use the correct head, properly mount the bracket on the foundation, use enough bolts, and pay attention or adequately observe and monitor his use of the equipment, parts, and/or machinery; and

e. Other ways, methods, actions, and inactions discovered through further investigation.

26. Defendant Magnum is entitled to a comparative fault defense, specifically:

a. Plaintiff stood in front of the RAM when he was warned that doing so was dangerous by BJ Dwyer, or other Defendant Magnum employees;

b. Plaintiff failed to use a safety bolt on the RAM and/or other machinery or parts;

c. Plaintiff failed to maintain and/or utilize a pressure log that could have prevented the accident;

d. Plaintiff used the operating system in an unsafe manner, specifically, Plaintiff failed to: properly align the RAM and bracket, use the correct head, properly mount the bracket on the foundation, use enough bolts, and pay attention or adequately observe and monitor his use of the equipment, parts, and/or machinery; and

e. Other ways, methods, actions, and inactions discovered through further investigation.

WHEREFORE, having fully responded to Plaintiff's Petition, Defendant Magnum Piering, Inc. respectfully prays for an Order of this Court dismissing Plaintiff's claims against it, for costs herein incurred, and for such other and further relief as the Court deems just and proper.

**DEFENDANT MAGNUM PIERING, INC. RESPECTFULLY REQUESTS TRIAL  
BY JURY ON ALL ISSUES HEREIN**

Respectfully submitted,

**FRANKE SCHULTZ & MULLEN, P.C.**

/s/ John G. Schultz

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**ATTORNEYS FOR DEFENDANT**

**MAGNUM PIERING, INC.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was E-Filed via the Court's electronic filing system, and a copy was served via email on August 22, 2018, to:

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