

IN THE 16<sup>TH</sup> JUDICIAL CIRCUIT COURT, JACKSON COUNTY, MISSOURI

BROCK SIMPSON,

*Plaintiff,*

vs.

MAGNUM PIERING, INC.,

Serve at:

R/A: Thomas E. Martin  
312 Walnut Street, Suite 3100  
Cincinnati, Ohio 45202

*and*

DOE ENTITIES/INDIVIDUALS 1-5,

*Defendants.*

Case No.:

Division:

**JURY TRIAL DEMANDED****PETITION FOR DAMAGES {TD}**

COMES NOW Plaintiff Brock Simpson, and brings his cause of action against Defendants Magnum Piering, Inc. and Doe Entities/Individuals 1-5, and each of their present, former, or future direct and indirect parent companies, subsidiaries, affiliates, agents, assigns, and/or related entities. Plaintiff, for his Petition, alleges as follows based upon personal knowledge as to himself and his own acts and experiences, and as to all other matters, upon information and belief, including investigation conducted by counsel.

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Brock Simpson is a citizen of the United States.
2. Defendant Magnum Piering, Inc. ("Magnum") is a corporation with a principal place of business outside of Missouri. Defendant Magnum conducts business throughout the United States and maintains a registered agent at registered agent, Thomas E. Martin, at 312 Walnut Street, Suite 3100, Cincinnati, Ohio 45202.

3. At all relevant times hereto, Defendant Magnum has been engaged in the business of (i) researching, testing, inspecting, manufacturing, designing, advertising, marketing, distributing, and/or selling Magnum products; (ii) designing, developing, disseminating and/or overseeing the design, development and/or dissemination of training materials for Magnum products; (iii) and/or providing instructions, training, support, assistance and/or overseeing the provision of training, assistance and/or support to individuals or entities that purchased Magnum products.

4. Defendants Doe Entities/Individuals 1-5<sup>1</sup> are any and all unknown entities or individuals that materially participated in the provision of (i) researching, testing, inspecting, manufacturing, designing, advertising, marketing, distributing, and/or supplying of the materials (raw or otherwise) used in the Magnum products at issue; (ii) researching, testing, inspecting, manufacturing, designing, distributing, and/or selling of the Magnum products at issue; (iii) instructions, training, support, and/or assistance to individuals or entities that purchased Magnum products.

5. Pursuant to RSMo § 506.500, jurisdiction is proper in this Court because Defendants have transacted business in Jackson County, Missouri; have distributed or caused to be distributed Magnum products (or materials to be used in Magnum products) to Jackson County, Missouri; it was foreseeable that Magnum products (or the materials used in such products) would be distributed to, and used in, Jackson County, Missouri; and/or the tortious acts complained of in this Petition occurred in Jackson County, Missouri.

6. Pursuant to RSMo § 508.010, venue is proper in this Court because the tortious acts complained of herein arose and took place within Jackson County, Missouri, the transactions

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<sup>1</sup> Collectively Magnum and Doe Entities 1-5 are referred to as "Defendants".

at issue or some part of the transactions took place within Jackson County, Missouri, and/or Plaintiff was injured Jackson County, Missouri.

**FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

7. At all times relevant hereto, Plaintiff has been engaged in the business of residential foundation repair.

8. As is relevant here, Defendants manufactured and/or distributed the Magnum products that directly caused, or directly contributed to cause, Plaintiff's injuries, specifically including, but not limited to, Hydraulic Ram Assemblies ("RAMs"), 36" Steel Push Piers ("Piles"), and Steel Brackets ("Brackets"). Defendants also sell and/or distribute shorter sections of Pile that can be used to finish driving a Pile. These shorter sections are typically cut from an original Pile, and are commonly referred to as a "Push Pipe".

9. When a foundation settles, it often leads to cracks in the walls of the foundation, which can lead to significant damage to a residential property and/or diminish the value of a residential property.

10. One of the ways to mitigate settling is to drive sections of Pile, such as those manufactured by Defendants, into the soil beneath, or immediately adjacent to, an existing residential foundation.

11. One side of the Pile has a 3" female adapter with an outer diameter slightly smaller than the inner diameter of the Pile, so that multiple sections of Pile can be coupled together to form a longer section.

12. A steel bracket, with an inner diameter slightly larger than the outer diameter of the Pile, is secured to the base of the foundation wall, and a section of Pile is inserted into the Bracket. A Pile and a Bracket are referred to as a "Pier".

13. The RAM is positioned over the Bracket, and the base of the RAM is secured to the Bracket with a singular bolt.

14. The RAM is connected to an Electric Hydraulic Pump ("Pump"), which operates a hydraulic arm that drives the Pile into the soil below the foundation. As the hydraulic arm of the RAM is extended, the back of the RAM presses against the wall of the foundation.

15. Once the hydraulic arm has been fully extended, it is retracted, and another section of Pile is inserted into the lower section of Pile. The process is repeated, driving multiple sections of interconnected Pile into the soil.

16. As the Pile is driven into the soil, the amount of pressure per square inch ("PSI") increases, which can be monitored by a gauge on the Pump.

17. At all times relevant hereto, including on June 1, 2012, Plaintiff monitored the gauge on the Pump in the manner in which he was trained and/or instructed by Defendants, to ensure that the PSI did not exceed the level specified by Defendants.

18. Once the Pile is met with sufficient resistance, i.e., a predetermined PSI, additional Piers are installed along one or more sides of the foundation.

19. Once a sufficient number of Piers have been installed, multiple RAMs can be daisy-chained together, and operated simultaneously to elevate the entire foundation (or a section of the foundation).

20. Once the desired elevation has been reached, the Piles are partially bolted to the Brackets, the RAM arm is retracted completely, the singular bolt securing the RAM to the Bracket is removed, and the Bracket is fully secured to the Pile. The Piers remain in place indefinitely.

21. On many occasions, including on June 1, 2012, Plaintiff used Magnum products to perform residential foundation repair as previously described, in the manner in which he was trained and/or instructed by Defendants.

22. On many of these foundations, including on June 1, 2012, after installing the requisite number of 36" sections of Pile, Plaintiff used the Push Pipe provided by Defendants to finish driving the interconnected 36" sections of Pile to resistance, in the manner in which he was trained and/or instructed by Defendants.

23. On June 1, 2012, at a time when the PSI was well below the level specified by Defendants, the RAM suddenly, unexpectedly, and without warning, broke free of the bracket and forcefully struck Plaintiff in the left side of his face.

24. Following this incident, it was discovered that the Push Pipe provided by Defendants had bent at far below the level of compression Defendants represented said Push Pipe (or the original Magnum Pile from which said Push Pipe had been cut) was rated.

(See the below image of the defective Push Pipe)



25. On information and belief, said defective Push Pipe bent in such a manner and direction that the center portion of the Push Pipe contacted the foundation wall.

26. On information and belief, as the Push Pipe bent, the compression exerted against it by the hydraulic arm of the RAM was redirected against the foundation wall, pushing the RAM away from the foundation wall; at the same time, the hydraulic arm pushed the RAM upwards and away from the Bracket.

27. On information and belief, the combination of the forces described in the foregoing paragraph placed such an extreme amount of pressure on the singular bolt securing the base of the RAM to the Bracket, that it caused said bolt to shear from the Bracket.

28. On information and belief, at the moment the singular bolt securing the base of the RAM to the Bracket sheared from the Bracket, the immense inwards and upwards forces previously exerted on said bolt were suddenly and violently released, redirecting and propelling the RAM into the left side of Plaintiff's face, thereby causing Plaintiff severe and permanent injuries.

29. At all times relevant hereto, Defendants sold and/or distributed Magnum products in a defective condition unreasonably dangerous for its reasonably anticipated use.

30. At all times relevant hereto, Defendants failed to use the degree of care that an ordinarily careful and prudent corporation and/or individual would use under the same or similar circumstances in the manufacture, design, testing, instructions and warnings of Magnum products, specifically those used by Plaintiff, and in the training, support and/or assistance in the use of Magnum products, specifically as it pertains to Plaintiff.

31. As a direct and proximate result of Defendants' sale and/or distribution of the Magnum products at issue, which were in a defective condition unreasonably dangerous for its

reasonably anticipated use; the negligent manufacture, design, testing, instructions and/or warnings of the Magnum products at issue; and/or the negligent training, support and/or assistance in the use of the Magnum products at issue; Plaintiff Brock Simpson has been caused to suffer injuries and damages in excess of \$25,000, including, but not limited to:

- (a) medical and surgical expenses;
- (b) a large laceration and scarring over his left eyebrow;
- (c) comminuted fractures of the midface involving his right orbital floor, right pterygoid, right maxillary sinus, left maxillary sinus, nasal bone, and nasal septum;
- (d) numerous surgical operations, including reconstructive and cosmetic surgeries, which necessitated the installation of hardware into his facial bones, and which resulted in facial scarring and intermittent (and ongoing) nasal discharge and drainage;
- (e) nasal deformity with deviation to the right and associated breaching, nasal and sinus problems;
- (f) shifting of the facial palate and associated malocclusion; and
- (g) pain, suffering, disability, permanent facial disfigurement and deformity, mental anguish, annoyance and inconvenience, loss of enjoyment of life, loss of enjoyment and companionship with his spouse and family, and loss of income, all in the past, and he is likely to incur such additional damages in the future.

**COUNT I**  
**STRICT LIABILITY – DEFECTIVE PRODUCT**  
**(PLAINTIFF VS. MAGNUM AND THE DOE ENTITIES)**

32. Plaintiff restates and incorporates by reference all paragraphs of this Petition, including all subparagraphs thereof.

33. The Magnum products at issue were in a defective condition unreasonably dangerous when put to a reasonably anticipated use.

34. At all times relevant hereto, the Magnum products at issue were used in a manner reasonably anticipated, in accordance with the manner in which Plaintiff was trained and/or instructed by Defendants.

35. The defective condition, which existed when the Magnum products at issue were sold and/or distributed, directly caused or directly contributed to cause Plaintiff's injuries and damages, as described herein.

36. The Magnum products at issue when sold and/or distributed were then unreasonably dangerous when put to a reasonably anticipated use without knowledge of their characteristics.

37. Defendants did not give an adequate warning of the dangers associated with the use of such products.

38. The Magnum products at issue, which were sold and/or distributed without adequate warnings, directly caused or directly contributed to cause Plaintiff's injuries and damages, as described herein.

WHEREFORE, Plaintiff Brock Simpson prays for judgment against Defendants in an amount determined to be fair and reasonable, for costs and expenses incurred in the prosecution of said claim, and for such other relief as is deemed just and proper.



**COUNT II**  
**NEGLIGENCE**  
**(PLAINTIFF VS. MAGNUM AND THE DOE ENTITIES)**

39. Plaintiff restates and incorporates by reference all paragraphs of this Petition, including all subparagraphs thereof.

40. At all times relevant hereto, Defendants failed to use the degree of care that an ordinarily careful and prudent corporation and/or individual would use under the same or similar circumstances, in, but not limited to, one or more of the following particulars:

- (a) researching, testing, inspecting, manufacturing, designing, advertising, marketing, distributing, and/or selling Magnum products, and/or materially participating in the same;
- (b) designing, developing, disseminating and/or overseeing the design, development and/or dissemination of training materials for Magnum products, and/or materially participating in the same;
- (c) providing instructions, training, support, assistance and/or overseeing the provision of training, assistance and/or support to individuals or entities that purchased Magnum products, and/or materially participating in the same;
- (d) in cutting Piles into shorter sections and selling and/or distributing "Push Pipes" to individuals or entities without first testing said Push Pipes to ensure that they meet the specifications of the original Magnum Piles, and/or without disseminating specifications or ratings for said Push Pipes;
- (e) in failing to ensure that Push Pipes are cut to the specifications of the original Magnum Piles, and/or in failing to cut the Push Pipe in a uniform

and even manner so as to ensure that the compression exerted by the hydraulic arm of the RAM is evenly distributed along the walls of the Push Pipe;

- (f) in failing to warn individuals or entities of the dangers associated with the use of such untested and unrated Push Pipes;
- (g) in failing to warn individuals or entities of the danger that such untested and unrated Push Pipes could bend, at far less than the PSI which Defendants represented that said Push Pipes (or the Piles from which they were cut) were rated, and that, in the event that the bend in such Push Pipe were to contact, and exert force against, the foundation wall, the RAM could shear from the singular bolt connecting it to the Bracket;
- (h) in selling and/or distributing RAMs designed and intended to be secured to a Bracket with a singular bolt; and/or
- (i) in failing to warn individuals or entities that the singular bolt securing the RAM to the Bracket could shear from the Bracket, thereby causing the RAM to be propelled away from the foundation with a high degree of force.

41. As a direct and proximate result of Defendants' negligence, Plaintiff was caused to experience and incur injuries and damages, as described herein.

WHEREFORE, Plaintiff Brock Simpson prays for judgment against Defendants in an amount determined to be fair and reasonable, for costs and expenses incurred in the prosecution of said claim, and for such other relief as is deemed just and proper.

**JURY DEMAND**

COMES NOW Plaintiff Brock Simpson, and hereby demands a trial by jury of all issues so triable.

Dated: May 30, 2017

Respectfully Submitted,

/s/ Bill Kenney

William C. Kenney MO Bar No. 63001

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