

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ERIK SCHULT

PLAINTIFF

AND:

**UNITED TECHNOLOGIES CORPORATION,
CARRIER CORPORATION and UTC CANADA CORPORATION**

DEFENDANTS

Brought under the Class Proceedings Act

STATEMENT OF CLAIM

THE PARTIES

1. The Plaintiff is a resident of North Vancouver, British Columbia, and resides at 3904 St. Marys Avenue.
2. The Defendant United Technologies Corporation ("UTC") is a Delaware corporation with a registered agent business office in Wilmington, Delaware. At all material times UTC was the parent corporation of UTC Canada and Carrier.
3. The Defendant Carrier Corporation ("Carrier"), a wholly owned subsidiary of UTC, is a Delaware corporation with a registered agent business office in Wilmington, Delaware. Carrier is one of the largest furnace manufacturers in the United States. Carrier designed, manufactured, warranted, advertised and sold the furnaces at issue in the instant action.
4. The Defendant UTC Canada Corporation ("UTC Canada") is a wholly owned subsidiary of UTC and is incorporated pursuant to the laws of New Brunswick with its head

office located in Saint John, New Brunswick. UTC Canada carries on business as a manufacturer and distributor of plumbing, heating and air conditioning equipment. UTC Canada warranted, advertised and sold the furnaces at issue in the instant action, which were manufactured by Carrier and/or UTC, to Canadian residents under the brand names "Carrier", "Bryant", "Payne" and "Day & Night".

CLAIM DEFINITIONS

5. The following definitions apply for the purposes of this Statement of Claim:
- (a) "Class" or "Class Members" means all persons resident in British Columbia who own or who have owned a Furnace;
 - (b) "Defendants" means collectively, UTC, UTC Canada and Carrier;
 - (c) "Furnace" means one of the following furnaces:

BRAND	MODEL NUMBER	PRODUCTION DATES
Bryant	340A	8/05-Present
Bryant*	340M	7/93-8/05
Bryant*	345M	6/96-8/05
Bryant	350A	8/05-Present
Bryant*	350M	7/93-8/05
Bryant	352A	8/05-Present
Bryant*	352M	4/01-8/05
Bryant	355A	8/05-Present
Bryant*	355M	7/93-8/05
Bryant*	398A	8/84-7/93
Bryant*	398B	9/87-9/92
Bryant*	399A	9/87-7/93
Bryant*	320A	9/92-7/93
Bryant*	321A	9/92-7/93
Carrier	58SX	8/84-10/89
Carrier	58SXA	10/89-9/91
Carrier	58SXB	9/87-9/92
Carrier	58SXC	9/91-7/93
Carrier	58DX	9/87-10/89
Carrier	58DXA	10/89-9/91

Carrier	58DXC	9/91-7/93
Carrier	58VCA	9/92-7/93
Carrier	58VUA	9/92-7/93
Carrier	58MCB	8/05-Present
Carrier	58MXA	7/93-8/05
Carrier	58MXB	8/05-Present
Carrier	58MCA	7/93-8/05
Carrier	58MVB	8/05-Present
Carrier	58MVP	8/93-8/05
Carrier	58MTA	4/01-8/05
Carrier	58MTB	8/05-Present
Carrier	58MSA	6/96-8/05
Payne*	490A	7/93-4/97
Payne	PG9M	4/97-Present

** may have also been marketed under the brand name "Day & Night"*

(d) "PPL" means polypropylene laminate;

THE FURNACES

6. The Furnaces are known as high efficiency condensing furnaces because they purport to maximize efficiency by employing a secondary heat exchanger to extract more heat from the hot gases through condensation. They are referred to as 90% Furnaces because 90% of the fuel is used to heat the home and only 10% escapes as exhaust.

7. The condensate formed in the secondary heat exchanger of the Furnaces is acidic, creating a highly corrosive environment. Therefore, most furnaces manufactured by competitors are manufactured with corrosion-resistant stainless steel, being the industry standard, rather than cheaper but inferior substitutes such as PPL-laminated steel.

8. Since 1983, the Defendants have looked to more cost effective methods of manufacturing the secondary heat exchangers, because of the high cost of manufacturing the secondary heat exchangers with stainless steel.

9. By 1988, the Defendants replaced the stainless steel with PPL-laminated steel. This was done notwithstanding the corrosion problems they observed with its PPL-laminated secondary heat exchangers in 1985.

10. The use of the PPL-laminated steel by the Defendants resulted in corrosion in the secondary heat exchangers and operational problems with the Furnaces.

11. The resulting corrosion introduces solids into the condensate. The solids plug the Furnace system causing the condensate to back up into the fan or otherwise leak from the secondary heat exchanger. This causes damage to other components of the Furnaces, leading to several operational problems including premature failure of the Furnaces and the potential release of dangerous levels of carbon monoxide, a gas lethal to human beings.

12. At all material times, the Defendants knew or ought to have known that the industry standard for the manufacture of the Furnaces is stainless steel because the condensate inside the heat exchangers is acidic and can lead to rust formation.

13. Failure of the secondary heat exchanger and/or rust in the secondary heat exchanger results in out-of-pocket expenses to diagnose and repair the failure in the secondary heat exchanger. Furthermore, as a result of not being able to fix the Furnace in time, some putative Class Members were unable to heat their homes in the winter months and were at risk of the release of dangerous levels of carbon monoxide.

14. The Plaintiff also alleges that the coupling box, cold spot baffle and the inlet plate of the Furnaces are defective in their design and choice of material. The defective nature of these parts contributes to the operational problems and ultimate failure of the Furnaces.

NEGLIGENCE

15. The Defendants owed a duty of care to the Plaintiff and the Class.

16. The Defendants breached their duty of care by negligently designing, developing, testing, manufacturing, licensing, assembling, distributing, marketing and selling the Furnaces. Particulars of some, but not all, of the acts of negligence are as follows:

- (a) The Defendants knew or ought to have known that the Furnaces were susceptible to operational problems and carbon monoxide leaks;
- (b) The Defendants knew or ought to have known that the Furnaces were defective;
- (c) The Defendants failed to warn the Plaintiff and the Class of the defects in the Furnaces;
- (d) The Defendants continued to sell the defective Furnaces although they were aware of the corrosion problems with the PPL-laminated secondary heat exchangers since 1985;
- (e) The Defendants failed to adequately design, manufacture and/or test the Furnaces to ensure the safety of the Furnaces prior to selling or distributing them;
- (f) The Defendants failed to properly train their employees responsible for the design, testing, assembly and manufacturing of the Furnaces;
- (g) The Defendants failed to ensure that their employees complied with the appropriate industry-wide quality system standards applicable to the manufacturing process;
- (h) The Defendants failed to properly supervise their employees and any subsidiary corporation;
- (i) The Defendants distributed and sold the Furnaces without conducting adequate testing to ensure they were defect-free;
- (j) The Defendants failed to take any steps to cure the defects in the Furnaces after they knew or ought to have known of the defects and risks associated

with the use of the Furnaces and further concealed such defects to the putative Class Members;

- (k) The Defendants failed to ensure that non-corrosive materials were used to manufacture the secondary heat exchangers in the Furnaces; and
- (l) The Defendants applied a PPL to protect the corrosion-vulnerable material when they knew or should have known that PPL was ineffective in preventing corrosion.

17. As a result of the Defendants' negligence as aforesaid, the Plaintiff and the putative Class Members have suffered damages as set out below.

BREACH OF CONTRACT

18. The Plaintiff further claims that the Defendants expressly and impliedly warranted the Furnaces as being free from manufacturing defects for at least one full year from the date of installation. The Defendants, in most instances, also provided an extended 19-year limited warranty on the heat exchanger from the second to the twentieth years.

19. The Defendants breached their warranty to the Plaintiff and the putative Class Members in that the Furnaces were defective from the day they were installed and failed well in advance of the applicable warranty periods, forcing the putative Class Members to incur significant out-of-pocket expenses in relation to the repair and/or replacement of the Furnaces.

DAMAGES

20. As a direct result of the negligence and breach of contract described above, including the failure of the secondary heat exchangers and other defects, the Plaintiff and the Class have incurred and will continue to incur expenses related to the diagnosis, repair, and replacement of the Furnaces and/or secondary heat exchangers.

21. The Plaintiff pleads that he and the Class would not have purchased the Furnaces, or would have paid less for the Furnaces, had they known the Furnaces were defective.

22. As a result of the Defendants' conduct described above, the Plaintiff and the putative Class Members have suffered damage and losses, including but not limited to:

- (a) the cost of inspections and repairs caused by the defective heat exchangers not covered by the warranty;
- (b) the cost of replacing their Furnaces and/or secondary heat exchangers prematurely;
- (c) the risk of serious injury as a result of not having an operational Furnace to heat their homes; and
- (d) out-of-pocket expenses incurred by the Plaintiff and the Class, including hotel expenses from not being able to live in their homes.

PUNITIVE DAMAGES

23. The Plaintiff pleads that the Defendants' conduct in the design, development, testing, manufacturing, licensing, assembly, distribution, marketing and sale of the Furnaces as pleaded above was high-handed, reckless, wanton, deliberate, callous, and exhibits an intentional disregard of the putative Class Members' rights and safety. Furthermore, the Defendants were indifferent to the consequences of their actions and were motivated by economic considerations such as the maintaining of revenue and market share. Such conduct renders the Defendants liable to pay punitive damages.

CLASS PROCEEDINGS ACT

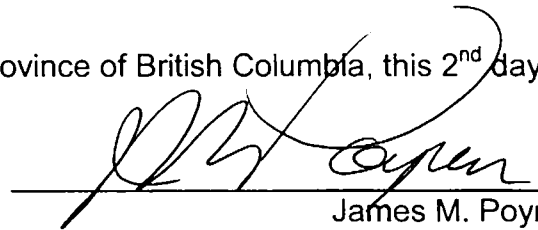
24. This action is brought on behalf of the Plaintiff and on behalf of a proposed class of persons with similar claims pursuant to the provisions of the *Class Proceedings Act*, R.S.B.C. 1996, c.50.

WHEREFORE, the Plaintiff claims on his own behalf and on behalf of members of the putative Class as follows:

- (a) General damages;
- (b) Special damages;
- (c) Punitive, aggravated and exemplary damages;
- (d) Interest pursuant to the provisions of the *Court Order Interest Act*;
- (e) Costs; and
- (f) Such further and other relief as to this Honourable Court may seem meet.

PLACE OF TRIAL: VANCOUVER, BRITISH COLUMBIA.

DATED at the City of North Vancouver, in the Province of British Columbia, this 2nd day of March, 2007.


James M. Poyner
Solicitor for the Plaintiff

THIS STATEMENT OF CLAIM is filed by **JAMES M. POYNER**, of the law firm of **POYNER BAXTER LLP**, Barristers & Solicitors, whose place of business and address for delivery is: Lonsdale Quay Plaza, #408 – 145 Chadwick Court, North Vancouver, B.C. V7M 3K1 – Telephone: 604-988-6321 – Fax: 604-988-3632

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