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ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
FEB 13 2015
Clerk of the Court
BY: ROMY RISK
Deputy Clerk

7 Attorneys for Defendant
8 HONEYWELL INTERNATIONAL INC.,
9 *f/k/a* AlliedSignal Inc., Successor-in-Interest to
The Bendix Corporation

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 YSIDRO LIMON, SR.,

Case No. CGC-15-276378

13 Plaintiff,

14 v.

15 AMCORD, INC., *et al.*,

**ANSWER OF DEFENDANT
HONEYWELL INTERNATIONAL
INC. TO COMPLAINT**

16 Defendants.

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18
19 Defendant Honeywell International Inc., *f/k/a* AlliedSignal Inc., Successor-in-Interest to
20 The Bendix Corporation (“Honeywell”), hereby answers the unverified Complaint for
21 Personal Injury filed on January 2, 2015 (“Complaint”) of plaintiff Ysidro Limon, Sr.
22 (“Plaintiff”), as follows:

23 **GENERAL DENIAL**

24 Pursuant to California Code of Civil Procedure section 431.30(d), Honeywell denies
25 generally and specifically each and every allegation of each cause of action contained in the
26 Complaint, and further denies that Plaintiff has sustained injury or damage in the sums alleged, or
27 in any other sum or sums, or at all, and that Plaintiff is entitled to any relief as a result of any act,
28 conduct, or omission of Honeywell.

AS AND FOR ITS AFFIRMATIVE DEFENSES HEREIN, HONEYWELL ALLEGES AS FOLLOWS:

FIRST AFFIRMATIVE DEFENSE

1. The Complaint, and each purported cause of action therein, fails to state facts sufficient to constitute a cause of action against Honeywell.

SECOND AFFIRMATIVE DEFENSE

2. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by the applicable statutes of limitation and/or repose, including, but not limited to, California Code of Civil Procedure sections 340 and 340.2.

THIRD AFFIRMATIVE DEFENSE

3. Venue is improper in this Court.

FOURTH AFFIRMATIVE DEFENSE

4. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by the doctrine of estoppel by virtue of Plaintiff's conduct.

FIFTH AFFIRMATIVE DEFENSE

5. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by the doctrine of laches by virtue of Plaintiff's conduct.

SIXTH AFFIRMATIVE DEFENSE

6. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by the doctrine of waiver by virtue of Plaintiff's conduct.

SEVENTH AFFIRMATIVE DEFENSE

7. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by Plaintiff's express assumption of the risks and dangers, if any, associated with the alleged conditions, conduct, or injuries, with knowledge of such risks and dangers.

EIGHTH AFFIRMATIVE DEFENSE

8. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by Plaintiff's implied assumption of the risks and dangers, if any, associated with the alleged conditions, conduct, or injuries, with knowledge of such risks and dangers.

NINTH AFFIRMATIVE DEFENSE

9. Some or all of the damages claimed by Plaintiff is not recoverable under applicable law. In the event that there is a finding of damages for Plaintiff, any award or judgment entered in favor of Plaintiff must be reduced or offset by the amount of any benefits Plaintiff received, or is entitled to receive, from any source, under applicable law.

TENTH AFFIRMATIVE DEFENSE

10. Plaintiff's damages, if any, were directly and proximately caused, or contributed to, in whole or in part, by the acts and/or omissions and/or fault of other individuals, firms, corporations, or other entities over whom Honeywell has or had no control or right of control, and for whom it is/was not responsible. Said acts and/or omissions and/or fault intervened between, and/or superseded, the acts and/or omissions and/or fault of Honeywell, if any. Plaintiff's recovery against Honeywell, if any, should therefore be barred or diminished in accordance with applicable law.

ELEVENTH AFFIRMATIVE DEFENSE

11. Plaintiff's damages, if any, were directly and proximately caused, or contributed to, by Plaintiff's own negligence or fault at the times and in the places set forth in the Complaint, or the negligence or other fault of individuals, firms, corporations, or other entities, over whom Honeywell has or had no control or right of control, and for whom it is/was not responsible which were in privity with Plaintiff. Plaintiff's recovery against Honeywell, if any, should therefore be barred or diminished in accordance with applicable law.

TWELFTH AFFIRMATIVE DEFENSE

12. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by Plaintiff's failure to mitigate damages, if any.

THIRTEENTH AFFIRMATIVE DEFENSE

13. At the times and in the places set forth in the Complaint, any Honeywell product in question was not being used in the normal and ordinary way, nor was it being used in a manner recommended by Honeywell, nor for the purposes for which it was designed. To the contrary, any such Honeywell product was being put to an abnormal use or misuse, and to a use that was not reasonably foreseeable to Honeywell. Such abnormal use or misuse was the sole, direct and proximate cause of Plaintiff's injuries and damages, if any. Plaintiff's recovery against Honeywell, if any, is therefore barred.

FOURTEENTH AFFIRMATIVE DEFENSE

14. At all times and in all places relevant to the alleged conditions, conduct, or injuries, Plaintiff had or should have had notice and knowledge of the risks and dangers, if any, associated with such conditions, conduct, and injuries, because any such risk or danger was open, obvious, and apparent to Plaintiff, Plaintiff appreciated the danger or risk, and voluntarily assumed any such danger or risk.

FIFTEENTH AFFIRMATIVE DEFENSE

15. If Plaintiff sustained any injury or damage as alleged in the Complaint, said injury or damage was solely, directly, and proximately caused by conditions, circumstances, and/or conduct of others, beyond the control of Honeywell.

SIXTEENTH AFFIRMATIVE DEFENSE

16. The actions of Honeywell were in conformity with the state of the medical, industrial, and scientific arts, so that there was no duty to warn Plaintiff under the circumstances, or to the extent such a duty arose, Honeywell provided adequate warnings, labels, and/or instructions concerning any Honeywell product in question. If those warnings, labels, and/or instructions were not made available or heeded, it is the fault of others and not of Honeywell.

SEVENTEENTH AFFIRMATIVE DEFENSE

17. The Complaint, and each purported cause of action therein, is barred, in whole or in part, because Plaintiff had failed to join all necessary and indispensable parties.

EIGHTEENTH AFFIRMATIVE DEFENSE

2 18. Honeywell made no express or implied representations or warranties of any kind to
3 Plaintiff. To the extent that the alleged representations or warranties were made, they were made
4 by persons or entities other than Honeywell, and over whom Honeywell has or had no control or
5 right of control.

NINETEENTH AFFIRMATIVE DEFENSE

7 19. Plaintiff did not rely upon any representations or warranties made by Honeywell.
8 To the extent Plaintiff relied upon any alleged representations or warranties, such reliance was
9 unjustified.

TWENTIETH AFFIRMATIVE DEFENSE

11 20. Plaintiff's claim for punitive damages, if granted, would be excessive and would
12 violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
13 Honeywell has not received fair notice that it could be subject to punitive damages in this state for
14 the conduct alleged. Honeywell's conduct was not deliberate, and the damages, if any, to
15 Plaintiff, were economic. The punitive damages sought by Plaintiff would be greatly
16 disproportionate to any actual damages.

TWENTY-FIRST AFFIRMATIVE DEFENSE

18 21. Plaintiff's claim for punitive damages would violate the Eighth Amendment to the
19 United States Constitution and Article I, Sections 1 and 17, of the California Constitution because
20 it seeks to impose an excessive fine upon Honeywell, is penal in nature, and seeks to punish
21 Honeywell upon vague standards.

TWENTY-SECOND AFFIRMATIVE DEFENSE

23 22. Plaintiff's claim for punitive damages would violate the Equal Protection Clause to
24 the Fourteenth Amendment to the United States Constitution and Article I, Section 7 of the
25 California Constitution because it discriminates against Honeywell on the basis of wealth and
26 because different amounts can be awarded against two or more defendants for the same act when
27 those defendants differ only in material wealth.

TWENTY-THIRD AFFIRMATIVE DEFENSE

23. Plaintiff's claim for punitive damages violates the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution because it seeks to punish Honeywell based upon unconstitutionally vague standards.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

24. Plaintiff's claim for punitive damages would violate the Fifth Amendment to the United States Constitution and Article I, Section 15 of the California Constitution because it would expose Honeywell to multiple punishments and fines for the same act or conduct.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

25. Plaintiff's claim for punitive damages violates the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution in the absence of an order bifurcating that claim from the issue of liability.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

26. Any award of punitive damages in this case would violate the Separation of Powers Doctrine since this Court and/or the jury would be usurping the exclusive power of the legislature to define crimes and establish punishment.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

27. Any award of punitive damages in this case would be constitutionally defective as an *ex post facto* law prohibited by the California and United States Constitutions. The jury, in making any such punitive award, would effectively be criminalizing conduct after it has occurred and without appropriate advance notice to a defendant that such conduct may subject it to criminal punishment.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

28. The punitive damages sought by Plaintiff would violate the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution because Plaintiff seeks to punish Honeywell in California for alleged conduct that occurred elsewhere.

TWENTY-NINTH AFFIRMATIVE DEFENSE

29. At no time relevant hereto was Plaintiff exposed to any asbestos from products designed, manufactured or sold by Honeywell.

THIRTIETH AFFIRMATIVE DEFENSE

30. Any exposure by Plaintiff to any of Honeywell's products was so minimal as to be insufficient, as a matter of law, to have constituted a substantial factor in causing any asbestos-related disease.

THIRTY-FIRST AFFIRMATIVE DEFENSE

31. Plaintiff's employers were negligent and careless, which negligence and carelessness were legal and actual causes of, and contributed to, the damages, if any, that Plaintiff sustained, and which negligence and carelessness are a bar to the recovery by Plaintiff, from Honeywell. Furthermore, Honeywell is entitled to set off any workers' compensation benefits and/or veterans' benefits and/or military benefits received or that are to be received by Plaintiff, against any judgment that may be rendered in favor of Plaintiff, against Honeywell, or against Honeywell and any other defendant or defendants.

THIRTY-SECOND AFFIRMATIVE DEFENSE

32. The Fair Responsibility Act of 1986, codified at California Civil Code section 1431.1 *et. seq.*, limits any damages governed thereby, which are awarded to Plaintiff against Honeywell, to that portion of Plaintiff's non-economic damages, if any, that are attributable to Honeywell's percentage of fault or liability, if any.

THIRTY-THIRD AFFIRMATIVE DEFENSE

33. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by the exclusivity of remedy under the California Workers Compensation Act, California Labor Code section 3200 *et. seq.*

THIRTY-FOURTH AFFIRMATIVE DEFENSE

34. Plaintiff's claims are barred or preempted, in whole or in part, by federal law, statutes, and regulations.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

35. Honeywell is not liable for Plaintiff's injuries, if any, because it did not exercise the requisite degree of control over the details of Plaintiff's work.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

36. Honeywell neither designed, nor manufactured nor sold any of the products alleged in the Complaint.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

37. Any products manufactured by Honeywell that incorporated asbestos-containing materials alleged to have been a cause of, or to have contributed to, any disease contracted by Plaintiff, were manufactured in, under, and in conformity with the direction and control of the United States Government, which at all times material hereto had knowledge superior to that of Honeywell with respect to the potential hazards of asbestos products; accordingly, no liability can be imposed upon Honeywell.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

38. Any and all "market share," "enterprise," and/or "concert of action" theories of liability are inapplicable to Honeywell and/or any of Honeywell's products in question.

THIRTY-NINTH AFFIRMATIVE DEFENSE

39. Third parties over whom Honeywell has or had no control or right of control, and for whom it is/was not responsible, altered or modified the Honeywell product or products in question, and such alteration or modification was the sole, direct, and proximate cause of Plaintiff's damages, if any, thereby barring any and all claims against Honeywell.

FORTIETH AFFIRMATIVE DEFENSE

40. The plans or designs, method or technique of manufacturing, assembling, testing, labeling and sale of any Honeywell product alleged in the Complaint to have caused all or part of Plaintiff's alleged damages conformed with the state of the art at the time any such Honeywell product was designed, manufactured, assembled, tested, labeled and/or sold by Honeywell, pursuant to generally recognized and prevailing standards and in conformance with the statutes,

1 regulations, and requirements that governed the product or products at the time of design,
2 manufacture, assembly, testing, labeling, and sale.

3 **FORTY-FIRST AFFIRMATIVE DEFENSE**

4 41. The benefits of the design of any Honeywell product in question outweigh any risk
5 associated with said products, if there was actually any risk, which Honeywell denies.

6 Honeywell reserves the right, upon completion of its investigation and discovery, to assert
7 such additional defenses as may be appropriate.

8 **FORTY-SECOND AFFIRMATIVE DEFENSE**

9 42. California Code of Civil Procedure section 361 is a bar to this action because
10 Plaintiff's claims arise in another state and, by the laws of that state, an action cannot be
11 maintained by reason of the lapse of time and as a consequence, cannot be maintained in this
12 state.

13 **FORTY-THIRD AFFIRMATIVE DEFENSE**

14 43. Another action is pending or has been adjudicated between Honeywell and
15 Plaintiff on the same claims alleged in this action, and therefore, pursuant to California Code of
16 Civil Procedure section 430.10(c), this action is duplicative and vexatious and cannot be
17 maintained.

18 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

19 44. Honeywell was under no legal duty to warn Plaintiff of the hazard associated with
20 the use of products containing asbestos or their existence at any premises owned, operated or
21 otherwise controlled by Honeywell. The purchasers of said products, Plaintiff, Plaintiff's
22 employers, his unions or certain third parties yet to be identified were knowledgeable and
23 sophisticated users who knew or should have known of the risk associated with using products
24 containing asbestos and, assuming a warning was required, were in a better position to warn
25 Plaintiff.

WHEREFORE, Honeywell prays for judgment against Plaintiff dismissing the Complaint and each and every purported cause of action alleged against Honeywell therein, and awarding Honeywell costs, interest, disbursements and such other and/or further relief as the Court may deem appropriate.

DATED: February 13, 2015

PERKINS COIE LLP

By: /s/ Bo W. Kim

Bo W. Kim

Attorneys for Defendant
HONEYWELL INTERNATIONAL INC.,
f/k/a AlliedSignal Inc., Successor-in-Interest to
The Bendix Corporation

PROOF OF SERVICE

2 I, Carolyn A. Sanford, am employed in the County of Los Angeles, State of California. I
3 am over the age of 18 years and am not a party to the within action. My business address is:
4 Perkins Coie LLP, 1888 Century Park East, Suite 1700, Los Angeles, California 90067-1721. I
5 am familiar with the business practice of Perkins Coie LLP. On February 13, 2015, I caused to be
6 served the following document(s) on the interested parties in this action through the use of the
7 website maintained by File & ServeXpress.

ANSWER OF DEFENDANT HONEYWELL INTERNATIONAL INC.
TO COMPLAINT

- 10 BY ELECTRONIC MAIL: I provided the document(s) listed above to the
11 File & ServeXpress website pursuant to their instructions on that website. If the
12 document(s) is/are provided electronically by 5:00 p.m., then the document will be
deemed served on the date that it was provided to File & ServeXpress.

13 I declare under penalty of perjury under the laws of the State of California and the
14 United States of America that the foregoing is true and correct and was executed in Los Angeles,
15 California.

16 DATED: February 13, 2015

Carolyn A. Sanford