

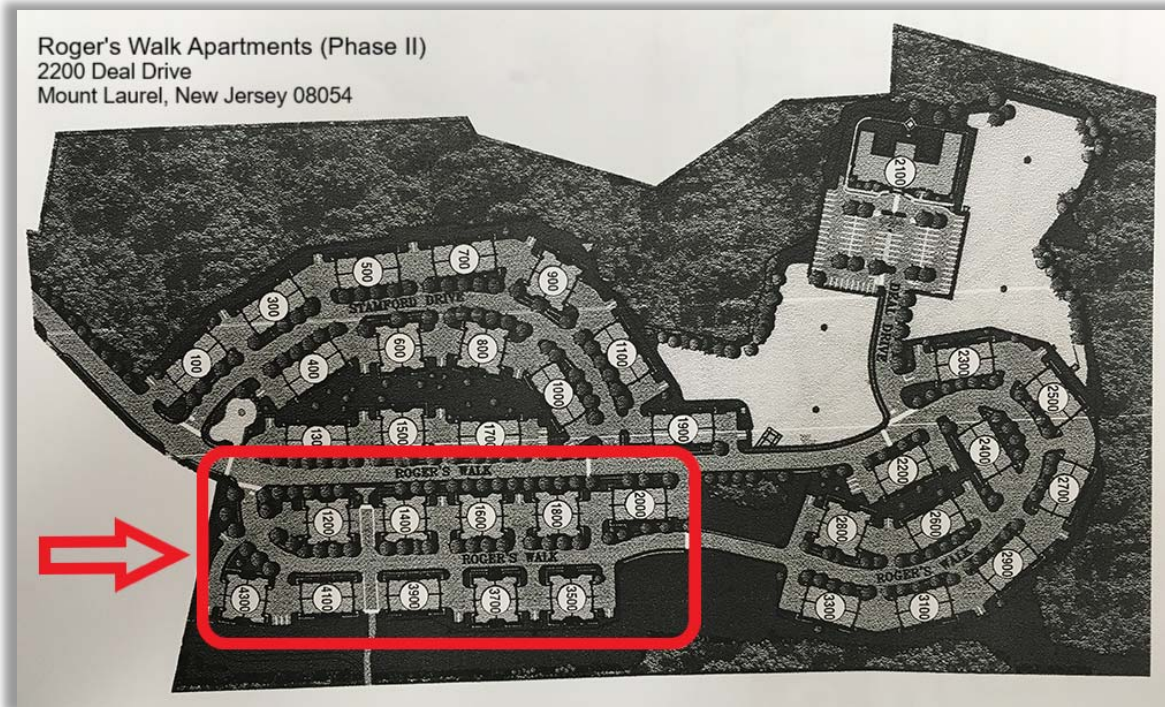
tubing, and metal crimp clamps needed to secure the tubing and fittings (together, the “Plumbing System”):



3. Zurn’s Plumbing System suffers from design and manufacturing defects, which are often latent, that inevitably cause the premature failure.

4. As a result of these design and manufacturing defects, Zurn’s Plumbing System has and will leak. Such leaks cause extensive damage to property and can result in mold and other damage which can be harmful to the health of consumers.

5. Unaware of the defects, Stanford purchased and installed Zurn’s Plumbing System in Phase II of the Rogers Walk Apartments in Mount Laurel, New Jersey (“Rogers Walk”), which Stanford owns. Phase II consists of 80 apartments divided among 10 buildings (numbered 1200, 1400, 1600, 1800, 2000, 3500, 3700, 3900, 4100, and 4300):



6. Though Zurn includes a 25-year limited warranty with the Plumbing System, Stanford experienced failures (leaks and cracked fittings) at Rogers Walk in 8 of 10 Phase II buildings resulting in extensive property damage. Stanford has incurred significant out-of-pocket expenses associated with replacing these failed Plumbing Systems and repairing the damage each failure caused.

7. Stanford has satisfied all the conditions and requirements of Zurn's warranty, but Zurn has refused to honor it. Zurn has denied responsibility for the failures of its Plumbing System at Rogers Walk and has failed to otherwise address in a meaningful way the risk Stanford and unit owners' currently face of future plumbing failures.

8. Stanford thus asserts claims for breach of warranty and violation of the New Jersey Products Liability Act, N.J.S.A. 2A:58-C-2, *et seq.*, and is seeking damages and declaratory relief.

THE PARTIES

9. Stanford Realty, L.L.C., a privately-held limited liability company, owns the Rogers Walk Apartments located at 2100 Deal Drive, Mount Laurel, New Jersey. Stanford Realty has two members. The first is Michell R. Davis, a natural person, who is a citizen of and resides in Pennsylvania. The second is the Rogers Walk Family Trust, which was formed under the laws of the State of New Jersey. The Rogers Walk Family Trust trustee is a citizen of and resides in New Jersey. The Trust's beneficiary is Mitchell Grayson, whom is a citizen of and resides in New Jersey and at times Pennsylvania.

10. Zurn Pex, Inc. ("Zurn") is a Delaware corporation having its principal place of business at 116 Maple Street, Commerce, Texas. It is in the business of warranting, designing, manufacturing, selling, and servicing plumbing components.

JURISDICTION AND VENUE

11. This Court has original jurisdiction over this action pursuant to 29 U.S.C. § 1332 because complete diversity exists between the parties and the matter in controversy exceeds \$75,000.00, exclusive of interest and costs.

12. This Court has personal jurisdiction over Zurn because Zurn is present within or has minimum contacts with the State of New Jersey. Zurn has purposefully availed itself of the privileges of conducting business in the State of New Jersey. Zurn has sought protection and benefit from the laws of the State of New Jersey. Zurn regularly conducts business within the State of New Jersey; and Stanford's causes of action arise directly from Zurn's business contacts and other activities in the State of New Jersey.

13. More specifically, Zurn, directly or through authorized intermediaries, ships, distributes, offers for sale, sells, or advertises products and services in the United States, and the

State of New Jersey, including but not limited to the Plumbing System. Zurn solicits customers in the State of New Jersey. Zurn has customers who are residents of the State of New Jersey and who use the Zurn's products and services in the State of New Jersey. Zurn derives substantial revenue from goods and services provided to individuals in New Jersey.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Stanford's claims occurred here.

FACTUAL BACKGROUND

Stanford Has Experienced *Repeated* Failures of Zurn Plumbing Systems At Rogers Walk

15. Stanford has experienced failures of the Zurn Plumbing System in over a dozen apartments in 8 of 10 Phase II buildings at Rogers Walk. In some of those units, there have been *multiple* failures. The damage has been extensive and the cost of repairs significant.

16. The most recent failure in Unit 3701 is illustrative of the prior failures.

17. In 2018, the unit owner in Unit 3701 complained of a leak in the ceiling above the kitchen. Upon inspection, Stanford (through a licensed plumber) discovered that the cause was a slow leak one floor up, which had gone undetected for an extended period of time. Identifying and locating the source of the leak required opening the unit owners' kitchen ceiling:



The source of the leak was the defective PPSU fitting under the metal crimp:



The cost to remediate the damage was approximately \$1,965.00. The remainder of the defective Plumbing System remains in place in Unit 3701.

18. Other units suffered similar failures. For instance, in 2015 Unit 3705 suffered leaks. Upon inspection, Stanford discovered that the cause was Zurn's fittings. The cost to repair damage was approximately \$2,249.00. A photo of the damage in Unit 3705 is provided here:



Zurn Wrongly Denied Stanford's Warranty Claims and Existence of Any Defect

19. Zurn warrants the Plumbing System for 25 years and states that, where a system failure is the result of a defect, Zurn will reimburse the property owner for reasonable repair or

replacement charges, including damages to the surrounding property and premises. The warranty provides, in relevant part, as follows:

Subject to the terms and conditions of this Limited Warranty . . . Zurn PEX Plumbing and Radiant Heating Systems warrants only to the owner of the real property when installed by licensed professional contractors . . . who purchase and properly install in a potable plumbing system. . . (I) insert fittings, when installed as a system with Zurn PEX . . . cross-linked polyethylene tubing (PEX), for a period of twenty-five (25) years.

* * *

In order for this Limited Warranty to apply, the above referenced products must be installed by a licensed professional contractor in accordance with Zurn installation instructions as outlined in the Zurn Installation Guide, meeting all applicable code requirements and good plumbing practices.

* * *

If you believe that a product fails to meet the above Limited Warranty, you should notify us in writing . . . Upon receipt of a written claim under this Limited Warranty and evidence/identification of the date of manufacture of product, and after inspection by an authorized Zurn representative and determination of a manufacturing defect, Zurn will reimburse the property owner for reasonable repair or replacement charges, to include drywall and painting, as well as damages to real property and the premises within which the product is installed, resulting from the failure or leak. At our option, and in our sole discretion, we will either repair or replace the product with a Zurn product of the same or similar type, size, and like quantity...

A copy of this warranty is attached hereto as **Exhibit A**.

20. Following numerous failures of the Zurn Plumbing System in Phase II apartments at Rogers Walk, Stanford made multiple timely warranty claims and put Zurn on notice of the problems it was suffering. In connection with those claims, Stanford supplied Zurn with multiple failed PPSU fittings for inspection. Zurn ultimately denied Stanford's warranty claims.

21. Zurn's denial of Stanford's warranty claims was wrongful because Stanford substantially complied with its obligations under the terms of the warranty. Moreover, to the extent the Zurn warranty purports to limit or eliminate certain contractual rights afforded to

Stanford (*e.g.*, on the type of recoverable damages, ability to recover property damages), such limitations are unconscionable and unenforceable under the circumstances.

Stanford's Plumbing Systems Were Installed In Accordance With Zurn's Warranty

22. In December 2012, Stanford hired James E. Conner, Jr. Plumbing, Inc. ("Conner Plumbing") as the plumbing subcontractor to do the rough and final plumbing for the Phase II apartments at Roger's Walk. Conner Plumbing is located at 505 Route 168, Suites B & C, Turnersville, New Jersey and is a licensed plumber (State Lic. # 8750). It has been providing plumbing services in Southern New Jersey for over 25 years and has installed plumbing systems in over 20,000 homes.

23. Stanford's agreement with Conner Plumbing required Conner Plumbing to furnish and install complete PEX water systems in Rogers Walk's Phase II apartments in compliance with industry standards.

24. The agreement likewise required Conner Plumbing to comply with certain requirements specific to the installation of PEX water systems, including the following:

- All workers shall be experienced with installation methods and design requirements.
- Keep PEX piping in original packaging until time of installation. Do not store material outside.
- Mechanical joints shall be installed in accordance with manufacturer's instructions.
- Joints between plastic pipe and other materials shall be made with an approved adapter fitting.

25. On information and belief, Conner Plumbing met and satisfied its obligations to Stanford under the plumbing subcontractor agreement in furnishing and installing the Plumbing Systems in the Phase II apartments at Rogers Walk, and further that Conner Plumbing installed

the Plumbing Systems at issue in accordance with the Zurn Installation Guide, all applicable code requirements, and good plumbing practices.

Zurn's Plumbing System Is Defective

26. As part of Zurn's Plumbing System, Zurn's PPSU fittings are inserted into Pex tubing length and then secured with metal crimp ring (inserted areas are crimped into place). The fittings are secured by using a special tool that crimps metal rings around the outside of the tubing, which in turn, creates a seal between the Pex tubing and the fittings.

27. Zurn's plastic fitting specifications state that they comply with ASTM standards.

28. The design, materials, and manufacturing process chosen by Zurn for its Plumbing Systems places a great deal of stress on the PPSU plastic crimp fittings once the system is assembled as intended.

29. Zurn is responsible for the defective design and manufacture of the PPSU plastic crimp fittings.

30. Zurn knew or should have known that the PPSU plastic they chose for the crimp fittings made the fittings susceptible to premature failure.

31. Because of their defective design and manufacture, Zurn's PPSU plastic crimp fittings fail of their intended purpose.

32. Because of their defective design and manufacture, Zurn's PPSU plastic crimp fittings are inherently defective and are substantially certain to fail within the 25-year warranty provided by Zurn and/or the useful life of the fittings.

Inadequate Testing of Defendants' PPSU Plastic Crimp Fittings

33. Zurn did not adequately test the PPSU plastic crimp fittings in their anticipated environments before selling those plastic crimp fittings to the public.

34. In an effort to save time and money, Zurn did not adequately end-use test the PPSU plastic crimp fittings in Pex systems in their anticipated environment of use and over the expected period of their use.

35. Zurn conducted inadequate testing on their PPSU plastic crimp fittings and failed to test them in expected use conditions that they knew or should have known would lead to premature failure of the plastic crimp fittings.

Field Failures of Zurn's Pex Plumbing Systems

36. Upon information and belief, Zurn has received warranty claims and reports that their PPSU plastic crimp fittings have failed prematurely, and as such Zurn is aware of the fittings' defect.

Competitors' Use of Different Product Materials and Designs

37. Several of Zurn's competitors in the Pex plumbing market chose designs and materials that are much more resistant to the premature failure problems that have plagued the Zurn's PPSU plastic crimp fittings.

38. For instance, some of Zurn's competitors in the Pex plumbing market chose fitting materials like copper and bronze that are less susceptible to premature failure than the PPSU plastic crimp fittings.

COUNT I BREACH OF EXPRESS WARRANTY

39. Stanford realleges the foregoing paragraphs, inclusive, as though fully set forth herein.

40. Zurn's Plumbing System consists of goods and thus Stanford's express warranty claim is governed by the Uniform Commercial Code.

41. Zurn's Plumbing System contained an express warranty with every purchase, which is attached hereto as Exhibit 1 and which became part of the basis of the transaction between Stanford and Zurn.

42. Zurn warrants its Plumbing System for 25 years from the date of purchase when installed by a licensed professional contractor. Zurn also warrants that, if its Plumbing System is determined to be defective, Zurn "will reimburse the property owner for reasonable repair or replacement charges, to include drywall and painting as well as damages to real property and the premises within which the product is installed, resulting from the failure or leak."

43. Stanford complied with the terms of Zurn's warranty, including any and all conditions precedent and all obligations owed to Zurn related to the installation of its Plumbing System at the Rogers Walk apartments. Contrary to the terms of the warranty, Zurn has failed to reimburse Stanford for its repair and replacement expenses.

44. As a result of Zurn's conduct, Stanford has suffered an ascertainable loss in the form of direct monetary losses because Zurn has forced Stanford to pay for its own repairs and replacement plumbing systems.

COUNT II
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

45. Stanford realleges the foregoing paragraphs, inclusive, as though fully set forth herein.

46. Zurn manufactured and supplied the Plumbing System to Stanford and impliedly warranted to Stanford that its Plumbing System was of merchantable quality and fit for the use for which it was intended.

47. Stanford relied on Zurn's skill and judgment in selecting the Plumbing Systems.

48. The Plumbing Systems were unfit for their intended use and were not of merchantable quality, as warranted by Zurn, but instead suffered material design and manufacturing defects. These defects caused the Plumbing System to fail to perform when put to its intended use.

49. Zurn breached the implied warranty of merchantability, as the Plumbing Systems were not of merchantable quality due to design and manufacturing defects.

50. As a direct and proximate result of Zurn's breach of the implied warranty of merchantability, Stanford has suffered and will continue to suffer losses and damages as alleged herein in an amount to be determined at trial.

51. Stanford has complied with all obligations under the warranty, or otherwise has been excused from performance of such obligations as a result of Zurn's conduct described herein.

COUNT III
NEW JERSEY PRODUCTS LIABILITY ACT
DEFECTIVE MANUFACTURE AND DESIGN (N.J.S.A. 2A:58C-2, *et seq.*)

52. Stanford realleges the foregoing paragraphs, inclusive, as though fully set forth herein.

53. Zurn is the designer, manufacturer, distributor, marketer, promoter, supplier, and seller of the Zurn Plumbing System, which is defective and unreasonable dangerous to consumers.

54. In certain instances, Zurn's Plumbing System was defectively and improperly manufactured rendering the system deficient and unreasonably dangerous and hazardous to Stanford's tenants.

55. The Zurn Plumbing System is defective in design in that it is not reasonably fit, suitable, or safe for its intended purpose or the foreseeable risks exceeded the benefits associated with the design.

56. The defective condition of Zurn's Plumbing System rendered it unreasonably dangerous, and the Zurn Plumbing System was in this defective condition when it left the hands of Zurn.

57. The Zurn Plumbing System was expected to and did reach consumers, including Stanford, without substantial change in the conditions in which they were designed, manufactured, labeled, sold, distributed, marketed, promoted, supplied and otherwise released into the stream of commerce.

58. Stanford was unaware of the hazards and defects associated with the Zurn Plumbing System and used the system in a manner that was intended by Zurn.

59. Zurn is strictly liable to Stanford for designing, manufacturing, and placing into the stream of commerce a product that was unreasonable dangerous for its reasonably foreseeable uses at the time they left Zurn's control due to design and manufacturing defects.

60. Zurn knew or should have known about the dangers associated with the use of its Plumbing System and the defective nature of this system but continued to design, manufacture, and sell the system in disregard of the known risk of harm.

61. As a direct and proximate cause of the design and manufacturing defects and Zurn's misconduct, Stanford has suffered property damage and other incidental and consequential damages.

COUNT IV
NEW JERSEY PRODUCTS LIABILITY ACT
FAILURE TO WARN (N.J.S.A. 2A:58C-2, *et seq.*)

62. Stanford realleges the foregoing paragraphs, inclusive, as though fully set forth herein.

63. Zurn designed, manufactured, distributed, marketed, promoted, supplied, and sold and otherwise released the Zurn Plumbing System into the stream of commerce in a defective and unreasonably dangerous condition and therefore had a duty to warn users of the known risks associated with this system.

64. The Zurn Plumbing System was under the exclusive control of Zurn and was unaccompanied by appropriate warnings concerning the use of the system and the risk of failure and damages associated with such use.

65. Zurn failed to timely and reasonably warn of material facts regarding the dangers of the Plumbing System so that no purchaser, consumer, or reasonably anticipated user would have utilized those products had those dangers been known to such purchasers, consumers, or users.

66. Zurn's Plumbing System, which was designed, manufactured, distributed, marketed, promoted, supplied, and sold and otherwise released by Zurn into the stream of commerce, was defective due to inadequate post-sale warnings or instructions because after Zurn knew or should have known of the risk of failures and property damages from the use of its system, Zurn failed to provide adequate warnings and instructions to the users of its products, including Stanford.

67. As a direct and proximate result of Zurn's conduct, Stanford suffered property damage and other incidental and consequential damages.

PRAYER FOR RELIEF

WHEREFORE, Stanford prays for relief against Zurn as follows:

- A. Compensation for all actual, general, special, incidental, statutory, treble or other multiple, punitive and consequential damages to which Stanford is entitled, including pre-judgment and post-judgment interest on such monetary relief;
- B. Grant appropriate injunctive and/or declaratory relief as the Court may deem reasonable; and
- C. Such other and further relief the Court deems just and equitable.

JURY DEMAND

Stanford hereby demands a trial by jury on all issues so triable.

LITE DEPALMA GREENBERG, LLC

Dated: October 22, 2018

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LOCAL CIVIL RULE 11.2 CERTIFICATION

Pursuant to Local Civil Rule 11.2, I hereby certify that the matter in controversy is not related to any other action, pending arbitration or administrative proceeding currently pending in any court.

I hereby certify that the following statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

LITE DEPALMA GREENBERG, LLC

Dated: October 22, 2018

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