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Ginger Gardner, individually, and as guardian of her minor child, Abrina Lynn Gardner; Heather Ann Gardner; and Joshua Lee Gardner v. SPX Corporation; HOJ Engineering and Sales Co., Inc., d/b/a Dock and Door Services, a Utah corporation; and Schneider Canada, Inc., a Canadian Corporation : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

GINGER GARDNER, individually, and as guardian of her minor child, SABRINA LYNN GARDNER; HEATHER ANN GARDNER; and JOSHUA LEE GARDNER, Plaintiffs and Appellants, vs. SPX CORPORATION; HOJ ENGINEERING & SALES CO., INC., d/b/a DOCK & DOOR SERVICES, a Utah corporation; and SCHNEIDER CANADA, INC., a Canadian Corporation, Defendants and Appellees.	**APPELLANT'S REPLY BRIEF** Utah Court of Appeals No. 20090768 Trial Court No. 040922873

APPEAL FROM DECISIONS OF THE THIRD JUDICIAL DISTRICT COURT HONORABLE JUDGES TIM HANSEN AND ROBERT FAUST

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RELEVANT STATUTES

1. Utah Code Ann. § 78-27-22, *et seq.*, the "Utah Long-Arm Statute" (renumbered as Utah Code Ann. § 78B-3-201, *et seq.*, by Laws 2008, c. 3, § 687, eff. February, 7, 2008). An unannotated copy of each version is included in the addendum.

2. Utah Code Ann. § 78B-5-817, *et seq.*, the "Liability Reform Act" (formerly cited as Utah Code Ann. § 78-27-37, *et seq.*). An unannotated copy of each version is included in the addendum.

STATEMENT OF THE FACTS

The product in question was a Serco VFC dock leveler manufactured and sold by Serco, A United Dominion Company. SPX thereafter acquired Serco. (R. 30 Certificate of service for SPX Corporation's Responses to Plaintiffs First Set of Interrogatories and requests for Production of Documents–Actual response is part of SPX's "General Objections"-one page included in addendum).

ARGUMENT

Schneider Canada, Inc.'s ("Schneider Canada") first argument is that it is beyond the reach of the Utah Long-Arm statute based on the facts of this case. The Long-Arm Act, or as it is formally titled, the Non-Resident Jurisdiction Act, is currently found at U.C.A. 78B-3-201 et. seq. Regarding its purpose, it states in § 2 that it is the Utah legislature's policy that public interest "demands that the state provide its citizens with an effective means of redress against non-resident persons". It makes note that "technological progress" has resulted in increased interactions and "the flow of commerce" between persons of Utah and other states.

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This technological progress, particularly the Internet, video linkages, and business contacts, are increasingly more prevalent in today's society. Thus, it is even more important that the Utah Non-Resident Jurisdiction Act be extended as far as possible to protect Utah's citizens. In regards to this, it is specific legislative intent that:

> 3. The provisions of this part, to ensure maximum protection to citizens of this state, should be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution.

The Utah Supreme Court and the 10th Circuit Court of Appeals have agreed that the Utah Non-Resident Jurisdiction Act should be interpreted broadly to assert jurisdiction over non-resident defendants, "(T)o the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution." *Trillium USA, Inc. v. Board of County Com'r of Broward County, Florida* 37 P.3d 1093, (Utah 2001), *Axess, Inc. v. Orlux Distribution, Inc.* 428F.3d 1270, 1282 (10th Cir. 2005).

I. THE TRIAL COURT ERRED IN DISMISSING PLAINTIFFS' CLAIMS AGAINST SCHNEIDER CANADA FOR LACK OF PERSONAL JURISDICTION.

The Federal due process concerns involved herein are whether a Defendant had or should have had sufficient notice from its actions in designing and manufacturing a product

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that was put in the stream of commerce, so that when the product fails it could expect to have to defend itself in a Utah court.

Schneider Canada is correct in its statements that all communications regarding the design and manufacture of this product occurred in Canada. These conversations with SPX representatives, specifically James Alexander who was then the director of research and development, were at least as often as "a couple times per week" during the design phase. He then had a "constant dialog" with Schneider Canada employees regarding the design of the control panel. Mr. Alexander notes that it was discussed or mentioned to Schneider Canada employees on more than occasion [sic] that a majority of the control panels purchased from Schneider Canada could be shipped to and installed everywhere in the United States. (R. 1024). In addition, Steve Flear, Vice President of SPX Dock Products, stated Serco/SPX "purchased tens of thousands of control parts from Schneider Canada or its distributor Guillevin International ("Guillevin")" for installation in dock levelers and that the majority of the control panels purchased from Schneider Canada and Guillevin were shipped to and installed in the United States. He also states that this was discussed on more than occasion [sic] with Schneider Canada. (R. 1021).

Schneider Canada correctly states that its control boxes and products in general were sold through a Canadian distributor, Guillevin. There is no dispute, however, that Schneider Canada knew that the product, even though it passed through Guillevin's hands, was intended to be sold to SPX, which had specifically designed the products for its own use.

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Contrary to Schneider Canada's statements, Serco did not sell the control box to its affiliate SPX, instead SPX purchased Serco, and Serco became SPX (the Serco name was on the product which was placed into evidence, but SPX had bought Serco by the time of this litigation). (R.30,Cert-actual Discovery included in addendum). The connection links are therefore not made thinner by the fact that Guillevin was in the chain of sales, and Schneider Canada is incorrect in stating that Serco and SPX are different entities that caused more links in the chain.

Schneider Canada focuses on the United States Supreme Court decision in *Asahi Metal Industry, Co., Ltd. v. Superior Court of California*, 480 U.S. 102 (1987) for its claim that its product was not placed in commerce in such a manner that it could reasonably suspect that it might be used in the State of Utah. As has been stated in Gardner's original brief, and in various commentaries on U.S. Supreme Court decisions, Justice O'Connor's announcement in the *Asahi* decision was not a majority opinion. Instead, the majority of the Court agreed that the case should be reversed because it was not "fair play and substantial justice" for that case to be litigated in California.

In *Asahi*, the original Plaintiff brought suit for his injuries arising from a motorcycle accident caused by a defective tire manufactured by a Taiwanese company. The Taiwanese manufacturer had used a component part manufactured in Japan. A cross-claim was filed by the Taiwanese entity against the Japanese entity seeking indemnification. The main suit was settled and dismissed, which left only the dispute between the Taiwanese and Japanese

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companies. The Japanese company's motion to dismiss was granted based on the fact that there was no jurisdiction for that indemnification claim in California. The United States Supreme Court justices all agreed that it was unreasonable and unfair for two foreign entities to litigate in California. As such, four of the Justices found that there were minimum contacts, another four stated there was no reason to look at the minimum contacts test, and only Judge O'Connor as quoted in Schneider Canada's brief stated that there must be some purposeful attempt by the Defendant to find sufficient minimum contacts.

A. UTAH'S LONG-ARM STATUTE REACHES DEFENDANTS WHO ARE AWARE THAT THEIR PRODUCTS MAY BE USED IN UTAH.

Defendant Schneider Canada claims that because they have no official presence in Utah, they are beyond the reach of personal jurisdiction. This was also the claim made by the defendants in *DeMoss v. City Market*, 762 F.Supp. 913 (Utah 1991), but it failed to keep the defendants out of Utah's courts in that case. Defendant SDK manufactured an amino acid for human consumption, and sold it through a large chain of distribution. The *DeMoss* plaintiff was injured after consuming SDK-manufactured amino acid, bought from other defendants who were also part of a longer chain of commerce. SDK had "no offices, bank accounts, debts, real property or leases" in Utah or the United States; SDK "did not market or advertise" their amino acid in Utah. *Id.* at 915. Defendant Schneider Canada's protests are similar, like SDK they point as support for their position to the *Parry v. Ernst Home Center Corp.* case. The Tenth Circuit has cautioned against courts following that ruling on this very issue: "*Parry's* extensive reliance on Justice O'Connor's plurality opinion is suspect and has

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been criticized." *Demoss,* 762 F.Supp at FN 2. Relying on the *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) stream of commerce holding, the *DeMoss* court found that as SDK exported "massive quantities" of their product to the United States, they thus had a "clear expectation that the product would be consumed throughout the nation, including Utah." *DeMoss,* 762 F.Supp at 919. *DeMoss* is more on point and is critical of *Parry*, and should be controlling on this issue, as defendant SPX has been shown to be a producer of substantial products that are now for sale or in use in the United States.

The holding of *Parry* is in direct contradiction with Utah's Long-Arm Statute. Nothing in the Fourteenth Amendment to the United States Constitution prohibits each state from minimizing its jurisdictional reach, or constraining itself from the extent allowed under the Due Process clause of the Constitution, instead Utah's Long-Arm Statute forbids such restraint. This statute "requires that Utah courts assert jurisdiction over nonresident defendants <u>to the extent permitted by the due process clause</u>." *Parry v. Ernst Home Center Corporation: The 'Mauling' of Personal Jurisdiction Theory.* Marc Young, 1990 Utah L. Rev. 479 (1990), emphasis added. Rather than limiting the ability of Utahns to recover from only Utah businesses, finding specific personal jurisdiction over a Canadian company that had knowledge and intent to sell in the United States, including Utah, properly supports the intent of controlling case law, Utah's Long-Arm Statute, and the Due Process Clause of the Constitution.

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B. THE RULES GOVERNING FAIR PLAY AND SUBSTANTIAL JUSTICE REQUIRE SCHNEIDER CANADA TO REMAIN A DEFENDANT.

The notion of fair play and substantial justice established in *Asahi*, was broken down in to five (5) elements by the 10th Circuit Court of Appeals in the Utah case of *Pro Axess, Inc. v. Orlux Distribution, Inc.*, 428 F.3d 1270. In *Pro Axess*, a dispute arose as to whether a French manufacturer could be brought into court in Utah. The first issue regarding minimum contacts focused on the fact that the company conducted business through a subsidiary and therefore sufficient minimum contacts existed. The focus of the case, at 1279, was an analysis of the traditional notions of fair play and substantial justice. In doing this analysis the Court held that the following elements should be looked at:

1. The burden on the Defendant,
2. The forum state's interest in resolving the dispute,
3. The Plaintiff's interest in receiving convenient and effective relief,
4. The interstate judicial system's interest in obtaining the most efficient resolution of controversies,
5. The shared interest of the several states in furthering fundamental social policies.

The Court noted that when analyzing the minimum contacts and reasonableness, the weaker the Plaintiff's showing on minimum contacts, the less a Defendant needed to show to defeat jurisdiction, and that the reverse is true, an especially strong showing of

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unreasonableness may serve to fortify a borderline showing of minimum contacts. *Id.* at 1280.

In discussing these elements the Court noted that the burden of the Defendant, (1), in litigating is much less in modern society based upon "modern transportation and communication". The Defendant in *Pro Axess* had the ability to travel to the United States, had its own subsidiaries in the United States, there were no language issues, and therefore it was not "gravely" difficult and inconvenient for it to litigate in Utah. *Id.* at 1280. Regarding the forum state's interest, (2), the Tenth Circuit Court noted that states, in this case Utah, had an important interest in providing a forum where their residents could obtain redress for injuries caused by out of state entities. The Plaintiff's interest in convenient and effective relief, (3), was noted by the Court to hinge on whether there was convenient and effective relief for it in another forum. The interstate judicial system's interest in obtaining an efficient resolution, (4), was whether Utah was the most efficient place to litigate this dispute, and the final point, looking at the state's interest in furthering fundamental substantive social policies, (5), focused on the litigation's effect on a social policy in a foreign state; whether litigating in Utah would interfere with France's sovereignty. *Id.* at 1281. In applying all of the elements it was determined that the balance tipped toward the Utah Plaintiff/injured party having its local day in Court over any inconvenience upon the Defendant.

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In this situation even if the balance requires a strong showing of reasonableness, this is met by the case facts, which meet all five elements outlined in *Pro Axess.*

First, Aaron Gardner left behind an unemployed widow and a teenage daughter who has psychological disabilities. The Gardners are seeking their day in Court against the out-of-state Defendant which made the broken part in the control box for the leveler. These Plaintiffs do not have the means/assets to litigate in a foreign country such as Canada. The State of Utah is certainly the most efficient place to litigate the dispute, as all of scene witnesses reside in Utah. The Canadian justice system will not be impacted if Schneider Canada has to litigate a personal injury claim in Utah. Finally, the burden upon Schneider Canada will be minimal, as there is easy transportation between Canada and Utah, the Schneider Canada representatives have been to Utah on sales business, the parent and fellow subsidiaries of Schneider Canada have offices in Utah, and the commonality of language and values between Canadians and Utahns. An overall weighing of these factors clearly shows that the fairness issues in litigating this case can all best be resolved by enforcing the Utah Courts rights/jurisdiction over Schneider Canada.

The Gardners raised the issue of Schneider Canada's relation to other corporate entities to show that "fairness" requires that this case be litigated in Utah. Schneider Canada does not dispute that it is part of a "multi-national conglomerate"; a conglomerate with 197 productions facilities so they can sell around the world. (R. 261). It does not dispute that it has website links to the other listed entities. It does not dispute that it has traveled to Utah

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to make sales presentations. It does not dispute that the same broken part that was used in this control panel is offered for sale in Utah. It does not dispute that its related companies have offices in Utah. Instead, Schneider Canada steers away from the fairness issue by stating that the Gardners must pierce the corporate veil between these professionally established separate corporations. The Gardners are not claiming an alter ego theory; instead, the true nature of Schneider Canada was listed to show why it is not unfair for it to litigate this case in Utah.

Schneider Canada has argued for unstated reasons that a Canadian corporation faces substantial inconvenience in litigating in Utah. This would not appear to be the case as there are direct flights from Toronto, the home of Schneider Canada, to Salt Lake City. The language is the same. The legal systems are not markedly different. And as noted above, Schneider Canada representatives have been to Utah, and it is part of a conglomerate that has offices in Utah. Without any evidence to the contrary, it appears that it would not be a substantial inconvenience for Schneider Canada to litigate in Utah.

Finally, it should be noted that the broken part in the SPX control panel that allowed the leveler to fall and kill Aaron Gardner was manufactured by Schneider Canada. The Gardners were unable to conduct any discovery to determine what testing had been done on this part, whether there is a history of defects in this part, the amount of cycles of use of this part that could be expected before it would break, and others issues relating to manufacturing, use, and testing of this part. As such, as there could be no discovery on this

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point, the trial of this case turned to a discussion of the design of the product. The design claims and ultimate trial may have been significantly different if there had been information to present to the jury about Schneider Canada's defective part in the control panel. Accordingly, the Trial Court's ruling markedly changed the Gardners' trial tactics, and did not allow them to present all issues to the jury.

C. COLLATERAL ESTOPPEL SHOULD NOT PREVENT A FULL FACTUAL LITIGATION OF THIS CASE.

The death in this case was caused by a broken piece in the control panel that operated the leveler. That broken piece was manufactured by Schneider Canada. No other entity played any part in the manufacturing or testing of that part. Instead, the remaining defendants only were responsible for the design of the product. In fact, they started the process to bring Schneider Canada into the case so fault could be apportioned to it for the alleged manufacturing problem.

The Gardners were prevented from discovering the facts surrounding the manufacturing and testing of the defective product. This was because Schneider Canada was dismissed from the case on jurisdictional grounds. No evidence was therefore discoverable regarding how the product was made, how it was tested, when the product should fail, and whether it was unreasonable for the product to fail in this case.

The collateral estoppel theory urged by Schneider Canada is therefore inapplicable and fails on its first point: that the issue that was decided is identical to the one presented in the instant action. As noted in the Schneider Canada Brief, the jury finding was that there

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was no design defect in the leveler. A design defect is distinct from a manufacturing defect. The manufacturing defect issue was never answered by the jury.

Secondly, the issue was not completely fully and fairly litigated, as no discovery could be obtained from Schneider Canada. Schneider Canada was beyond the bounds of subpoena power, requests for production, or interrogatories of the Utah Court. As such, there was no discovery obtained regarding the defective part. Thus the case was not completely fully and fairly litigated.

The fact that Schneider Canada was not in the case is the reason the case was not fully and fairly litigated. There should be no collateral estoppel of litigating against Schneider Canada in this case, as the Plaintiffs could not fully develop their case. Instead, the Plaintiffs had to move forward with the design defect claim. This is distinctly different than a manufacturing claim, and therefore they should not be estopped from going forward, but instead they should be allowed to conduct discovery and then bring a case against those responsible for the defective manufacturing of the SPX Dock Leveler.

II. THE TRIAL COURT PERFORMED HARMFUL ERROR BY INCLUDING JURY INSTRUCTION 48.

Defendant SPX claims that because the jury stopped its deliberations by finding no liability against either SPX or HOJ, any argument about Instruction 48 is moot, and the giving of the instruction did not affect the outcome of the case. Plaintiffs aver that but for the presence of this confusing jury instruction, the likelihood of a different jury verdict against Defendants SPX and HOJ is sufficiently high, enough to undermine confidence in the

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outcome below. As the inclusion of the instruction bears directly upon the final verdict, it is not moot but determinative, and the Appellate Court should review the jury instruction for correctness. "We review challenges to jury instructions under a 'correctness' standard." *Steffensen v. Smith's Mgt. Corp.*, 862 P.2d 1342, 1346 (Utah 1993).

Defendant's reliance upon *Hanks v. Christensen,* 354 P.2d 564 (Utah 1960), which concerns acts of God as third-party interference, is improper because distinctly different issues are on appeal. In *Hanks*, the court found that there was "no negligence upon which to predicate liability," referring to the high wind/act of God defense (*Hanks*, 354 P.2d at 567), and therefore did not consider the jury instruction argument at issue worthy of review. This case is different in substance, as there are no intervening acts of God to take away the liability of the Defendants; including Jury Instruction 48 rendered the jury unable to reach the ultimate issues on the liability of Defendants SPX or HOJ.

Harmful error occurs when "the likelihood of a different outcome is sufficiently high that it undermines our confidence in the verdict."*State v. Hamilton,* 827 P.2d 232, 240 (Utah 1992). Defendant SPX cites this quote, referenced by *Butler v. Naylor,* 987 P.2d 41 (Utah 1999), in its Appellee Brief as an example of Utah law in support of their mootness issue, but Butler does not support their argument, as the facts and issues revolved around alternative theories of medical treatment. Like acts of God, these alternative theories created a situation rendering the trial, and the jury instructions, outside the realm of comparative review. The Butler court did not have to further consider the jury instructions regarding other theories

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because other theories had been entered into evidence at trial, and the Appellate Court found that it was possible the verdict was reached by relying upon one of those alternative theories. *Id at 45*. In the case on appeal, the instruction in question compounded confusion rather than inspiring inquiry, leading to error substantial enough to seriously question whether the outcome of the trial below would have remained the same had the instruction not been present.

The Steffensen case, also cited in support of the argument that the instruction was moot, does not apply to jury instructions as a whole, but rather to a technical wording of an instruction in a case where a store was found not liable for injury caused to a customer by a fleeing shoplifter. *Steffensen v. Smith's Mgt. Corp.,* 862 P.2d 1342 (Utah 1993). Technical disputes about the definition of foreseeability were in question on appeal and considered harmless. The jury instruction issues in this case are neither technical nor partial; what is on appeal is a jury instruction in its entirety, without which the verdict would be considerably altered.

In the absence of Jury Instruction 48, the jury would have examined the harm in total, rather than parsing out the blame among the defendants. Given the weight of the evidence showing that the leveler was faulty, and the jury's determination that the defendants were not liable, the trial court's error created a sufficiently high likelihood that the outcome would have been different had the jury instruction 48 not been given.

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CONCLUSION

The trial court erred in dismissing the Plaintiffs' claims against Schneider Canada for lack of personal jurisdiction, as Utah's long-arm statute requires that plaintiffs be allowed to hale Defendants who are aware that products may be used in Utah into court. The law governing issues of fair play and substantial justice for all parties also require Schneider Canada to remain a Defendant. Finally, the trial court performed harmful error by including Jury Instruction 48. In light of the foregoing, the Plaintiffs respectfully request the Court to find that the Trial Court committed reversible error and grant the Plaintiffs a new trial against SPX, HOJ, and Schneider Canada.

Respectfully submitted this 22nd day of December 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December 2010, copies of the foregoing were mailed via U.S. Mail, first class postage prepaid to the following:

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ADDENDUM

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

GINGER GARDNER, individually and a guardian of her minor child, SABRINA LYNN GARDNER; HEATHER ANN GARDNER; and JOSHUA LEE GARDNER, Plaintiffs, vs. SPX CORPORATION; HOJ ENGINEERING & SALES CO., INC., d/b/a DOCK & DOOR SERVICES, a Utah corporation, SCHNEIDER ELECTRIC HOLDING, INC., a Delaware Corporation, BIG D CONSTRUCTION CORPORATION, a California Corporation; and JOHN DOES I-X, Defendants.	DECLARATION OF JAMES C. ALEXANDER IN SUPPORT OF MEMORANDUM IN OPPOSITION TO SCHNEIDER CANADA, INC.'S MOTION TO DISMISS Civil No. 040922873 Honorable Leslie A. Lewis

James C. Alexander solemnly affirms the truth of the statements in the following declaration:

1. I am a resident of the London, Ontario, Canada, over the age of 21, competent to give testimony and have personal knowledge of the facts in this declaration.

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2. I was an employee of SPX Dock Products, my title upon retirement was Director of Research & Development, and I make the following representations.

3. As Director of Research & Development, I was responsible for developing new Serco and/or SPX Corporation products, including dock levelers.

4. During the product development of a dock leveler and its components, I worked closely with Schneider Canada, Inc. employees to design the control panel. I typically communicated with Schneider Canada, Inc. employees at least a couple times per week during the design phase.

5. When designing a new control panel, I typically presented Schneider Canada, Inc. with a sketch of a circuit. The circuit represented the specifications or needs of the control panel, and Schneider Canada, Inc. created detailed drawings and designed the control panel to match those needs.

6. There was constant dialogue between Serco and/or SPX Corporation employees and Schneider Canada, Inc. employees from the point where I gave Schneider Canada, Inc. the sketch of a circuit until the final design of the control panel.

7. A majority of the control panels purchased from Schneider Canada, Inc. were shipped t and installed in the United States.

8. It was discussed with or mentioned to Schneider Canada, Inc. employees on more than occasion that a majority of the control panels purchased from Schneider Canada, Inc. would be shippe to and installed everywhere in the United States.

9. I recall the president of Schneider Canada, Inc. and Jerry Cross, a Marketing Manager Schneider Canada, Inc., making at least one trip to Serco's and/or SPX Corporation's Dallas, Texas offices. The visit included meetings, a sales presentation about Schneider Canada, Inc.'s products an

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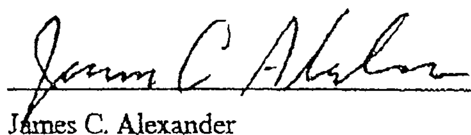
dinner in the evening.

DATED this 24th day of August, 2006.



James C. Alexander

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

GINGER GARDNER, individually and a guardian of her minor child, SABRINA LYNN GARDNER; HEATHER ANN GARDNER; and JOSHUA LEE GARDNER, Plaintiffs, vs. SPX CORPORATION; HOJ ENGINEERING & SALES CO., INC., d/b/a DOCK & DOOR SERVICES, a Utah corporation, SCHNEIDER ELECTRIC HOLDING, INC., a Delaware Corporation, BIG D CONSTRUCTION CORPORATION, a California Corporation; and JOHN DOES I-X, Defendants.	DECLARATION OF STEVE FLEAR IN SUPPORT OF MEMORANDUM IN OPPOSITION TO SCHNEIDER CANADA, INC.'S MOTION TO DISMISS Civil No. 040922873 Honorable Leslie A. Lewis

Steve Flear solemnly affirms the truth of the statements in the following declaration:

1. I am a resident of the Arva, Ontario, Canada, over the age of 21, competent to give testimony and have personal knowledge of the facts in this declaration.

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2. I am an employee of SPX Corporation, Vice President of SPX Dock Products, and make the following representations.

3. I was Purchasing Director for Serco in their London, Ontario, office when Serco purchased the Schneider Canada, Inc. control box involved in this litigation. During that time, I negotiated the purchase of Telemecanique-branded control boxes from Schneider Canada. SPX Corporation subsequently purchased Serco.

4. Serco, now SPX Corporation, has had a business relationship with Schneider Canada, Inc., or its predecessor, for over twenty years.

5. Serco and/or SPX Corporation employees worked closely with Schneider Canada, Inc. employees to design control boxes for dock levelers throughout their relationship.

6. Serco and/or SPX Corporation provided the specifications or needs of a particular control box, and Schneider Canada, Inc. designed and manufactured the control box to meet those specifications or needs.

7. The product involved in this litigation is comprised of a panel with push-buttons to operate the dock leveler and a steel box containing the electrical components. The assembly may be referred to as the control box or control panel.

8. Schneider Canada, Inc. designed, re-designed and manufactured dozens of different control panels for Serco and/or SPX Corporation.

9. Over the course of relationship, Serco and/or SPX Corporation purchased hundreds, if not thousands, of control boxes from Schneider Canada, Inc. or its distributor, Guillevin International, Inc., like the control box installed in the vertical dock leveler installed at Sysco's West Jordan, Utah

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facility.

10. Over the course of the relationship, Serco and/or SPX Corporation purchased tens of thousands of control parts from Schneider Canada, Inc. or its distributor, Guillevin International, Inc., for installation in other types of dock levelers.

11. A majority of the control panels purchased from Schneider Canada, Inc. or its distributor, Guillevin International, Inc., were shipped to and installed in the United States.

12. It was discussed with or mentioned to Schneider Canada, Inc. employees on more than occasion that a majority of the control boxes purchased from Schneider Canada, Inc. would be shipped to and installed everywhere in the United States.

13. At the time of the purchase of the control box in question in this litigation, SERCO purchased all of its vertical dock leveler control boxes from Schneider Canada, Inc.

DATED this 31 day of August, 2006.

Steve Flear

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Pursuant to Rules 33 and 34 of the Utah Rules of Civil Procedure, defendant SPX Corporation hereby responds to plaintiffs' first set of interrogatories and requests for production of documents.

GENERAL OBJECTIONS

SPX Corporation ("SPX") did not design, redesign, manufacture or sell the subject dock leveler. SPX understands and believes that product was a Serco VFC Series dock leveler manufactured and sold by Serco, A United Dominion Company ("Serco"). SPX thereafter acquired Serco, and currently,

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