SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
——————————————————————————X

CHETRAM ETWAROO,

Plaintiffs,

-against-

PARKASH 2000, LLC, APPROVED OIL & SERVICE CO., THE APPROVED COMPANY OF BUILDING, INC., BAUER WELDING & BOILER REPAIRS, INC.,

Defendants.
——————————————————————————X

AFFIDAVIT of EXPERT
INDEX #: 21203/2014

STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

James Pugh, Ph.D., P.E., being duly sworn deposes and says under the penalties of perjury:

1. I am a licensed professional engineer in the State of New York and maintain an office at Inter-City Testing and Consulting Corporation, 60 East 42nd Street, Suite 4600, New York, New York.

2. I received my S.B. degree in Metallurgy and Materials Science from MIT in 1968 and my Ph.D. degree in Biomedical Engineering from MIT in 1972. Since 1986 I have served as the Director of Biomedical Engineering/Metallurgy and Materials Science and Engineering at Inter-City Testing and Consulting Corporation and serve as a Staff Specialist in Scientific Accident Reconstruction. I have held academic positions at the Hospital for Joint Diseases in Biomechanics and Bioengineering and the State University of New York in the field of orthopedic engineering. I have also held professorships at the Cooper Union School of Engineering in New York City, the City College of the City University of New York, and New York University. My full credentials and experience are set forth in my Curriculum Vitae attached hereto. I am a member of many scientific and professional associations including the American Concrete Institute, the Society of Automotive Engineers, the

American Association of Mechanical Engineers, and the American Association of Civil Engineers.

3. As part of my analysis and defect assessment in this matter I reviewed among other things, photographs showing the burns, legal documents including depositions and Bills of Particulars, medical records, and other materials associated with the incident that occurred on August 3, 2013, in Apartment 4C at 2000 Anthony Avenue, Bronx, NY. Further, I have extensive experience over 30 years of work as a licensed professional engineer in the analysis of human bodily injury and the engineering principles associated therewith, including thermal trauma and water scalds and burns. This affidavit is submitted in support of the Plaintiff Chetram Etwaroo and is to oppose the motion for summary judgment filed by Defendants.

4. It is understood that the Plaintiff Chetram Etwaroo, date of birth April 10, 1948, 5 feet 4 inches in height and 178 pounds in weight, was sitting on a shower bench when hot water came out of the hand-held hose. He moved his left foot out of the tub quickly but his right foot stayed in the water a few seconds. **Because he had partial amputations of his toes due to diabetic vascular insufficiency prior to the scalding event, and the burn was localized largely to the plantar aspect of the right foot, there was a thickening of the skin more so than normal plantar thickening. Because of lack of sensation, the Plaintiff did not notice the burn.**

5. Further, defense expert Arslanoglu references an "inconsistent diagnosis". On the contrary, the medical records and photographs show that the plantar burn as either a second degree or third degree burn. Plaintiff's expert Colavito measured the temperatures shortly after the incident and found them to be 145 to 150 degrees F.

6. Further, the specifics of the injuries to the right foot as reported in the records, because the burn was not treated for two days, and the reported sloughing of the skin and bleeding down to the base of the burn during debridement, are all consistent with a second to third degree burn consistent with a water temperature between 145-150 degrees F.

7. Significantly, contrary to Defendant's bio-mechanical expert, the burns

occurred on the bottom part of the foot as well. This is due to the fact of the positioning of the hose which was not in the bucket when the scalding hot water was delivered to the tub. It is axiomatic that the scalding hot water that is leaving the hose will fill the bottom of the tub where Plaintiff's foot was placed, thereby exposing the right foot to the scalding hot water and leading to an ulcer that has not healed. Additionally, there would also have been direct contact from the scalding hot water coming out from hose to the bottom part of the foot. Finally, the hot water would have also burned the other portions of this foot by direct contact coming from the scalding hot water itself even without pulling in the bathtub.

8. Therefore, to a reasonable degree of engineering, scientific, and biomechanical certainty, the scalding injuries sustained by Plaintiff were due to excessive water temperatures in the range of 145 to 150 degrees F.

9. Further, had an anti-scald device been installed in the shower, the injuries would not have been sustained because the water temperature would have been limited to 120 degrees F.

10. All of the opinions rendered in this affidavit are to a reasonable degree of engineering, scientific, and biomechanical certainty. It is my opinion to a reasonable degree of engineering, scientific, and biomechanical certainty that plaintiff was exposed to water 145 to 150 degrees F for a few seconds for the reasons cited above and per the explanations cited above.

11. Further, at this juncture, I sayeth not.

JAMES PUGH, PH.D., P.E.

Sworn to before me this
20th day of July 2018

NOTARY PUBLIC

ALEXANDRA M. BINDER
NOTARY PUBLIC-STATE OF NEW YORK
No. 01BI6375744
Qualified in Suffolk County
My Commission Expires 05-29-2022

(This is a Sample CV, please refer to our website for a complete listing of all CVs.)

Expert CV Dr. James Pugh, P.E.(condensed)

EXPERTISE

Analysis and evaluation of personal injuries and causal relationship of injuries to the accident events and environment. Specialist in scientific accident reconstruction, metallurgy and material science. Analysis of sports injuries, automotive defects & seatbelt performance in vehicular accidents; injuries sustained by failure of medical devices. Member ASTM Slip and Fall Committee.

EDUCATION

1972 Ph.D. in Biomedical Engineering from the Department of Metallurgy and Materials Science, Massachusetts Institute of Technology (MIT), Cambridge, Mass.
1968 B.S. in Metallurgy & Materials Science from Department of Metallurgy & Materials Science, Massachusetts Institute of Technology, (MIT), Cambridge, Mass.

EXPERIENCE

1986 - Present Director, Biomedical Engineering, Materials Science & Engineering InterCity Testing & Consulting Corporation; Staff Specialist in Scientific Accident Reconstruction; Regular attendee at Stapp Car Crash Conferences (SAE).
1/1/85 - 10/1/86 State University of New York at Stony Brook
Research Professor, Department of Orthopaedics, School of Medicine Professor of Materials Science and Engineering, Technical Director of Gait Laboratory, Director of Orthopaedic Engineering
11/1/79 - 12/31/84 Hospital for Joint Diseases Orthopaedic Institute
Director, Division of Bioengineering
Associate Director, Occupational & Industrial Orthopaedic Center
9/1/72 - 10/31/79 Hospital for Joint Diseases & Medical Center
Director, Biomechanics Laboratory

PROFESSORSHIPS

7/95 - Present Professor, Cooper Union School of Engineering, New York
10/86 - 6/87 - Visiting Professor of Bioengineering
The Cooper Union School of Engineering, New York City
12/20/89 - Affiliate Professor/Bioengineering
The University of Washington, Seattle, Washington
1/85 - 10/86 - Research Professor, Department of Orthopaedics,
School of Medicine, SUNY State University of New York at Stony Brook
9/72 - 12/84 - Professorships at Mount Sinai School of Medicine, The Cooper Union School of Engineering, New York University, City College/University of NY.

TEACHING & ACADEMIC ACTIVITIES

Adjunct Professor - Cooper Union School of Engineering; Teacher of in-company courses in finite-element analysis, strength and structural analysis, and human factors

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