

**ALEXANDER MALDONADO and MERTON N. ROTTER, as
Guardian ad Litem for ELIANA MALDONADO and
ETHAN MALDONADO,**

Case No.: 12-CV-000847

Plaintiffs,

Case Type: PI-Auto

Case Code: 30101

and

ACCIDENT FUND INSURANCE COMPANY OF AMERICA,

Subrogated Plaintiff,

and

**MILWAUKEE PUBLIC SCHOOLS
5225 W. Vliet Street
Milwaukee, WI 53208**

**BADGER CARE PLUS / MEDICAID
c/o Office of Legal Counsel
One W. Wilson Street, Room 651
P.O. Box 7850
Madison, WI 53707**

and

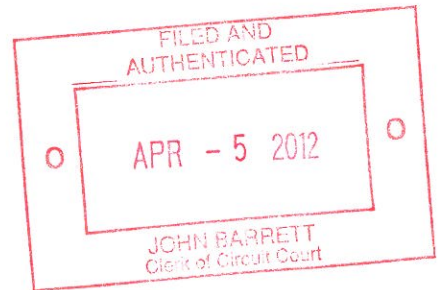
**MOLINA HEALTHCARE OF WISCONSIN
2400 S. 102 Street
West Allis, WI 53227**

Involuntary Plaintiffs,

v.

SPANCRETE INDUSTRIES, INC., or in the alternative
SPANCRETE, INC., or in the alternative, THE SPANCRETE
GROUP, INC.; ZURICH AMERICAN INSURANCE
COMPANY; ESI CONSTRUCTORS, INC., or in the
alternative, ESI GROUP USA, INC.; and A, B, C, D, and E,
fictitious names of other liability insurance companies,
subrogated parties, or other persons interested in subject
litigation,

Defendants.



4/4/12

AMENDED SUMMONS

THE STATE OF WISCONSIN:

To each person named above as a defendant:

You are hereby notified that the plaintiff(s) named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this Summons, you must respond with a written Answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an Answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the court, whose address is:

Clerk of Circuit Court
Milwaukee County Courthouse
901 North Ninth Street, Room 401
Milwaukee, WI 53233

and to Warshafsky, Rotter, Tarnoff & Bloch, S.C., plaintiff(s)' attorneys, whose address is: 839 North Jefferson Street, Suite 300, Milwaukee, Wisconsin 53202.

If you do not provide a proper Answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property. You may have an attorney help or represent you.

Dated: April 4, 2012

WARSHAFSKY, ROTTER,
TARNOFF & BLOCH, S.C.
Attorneys for Plaintiffs

Merton N Rotter

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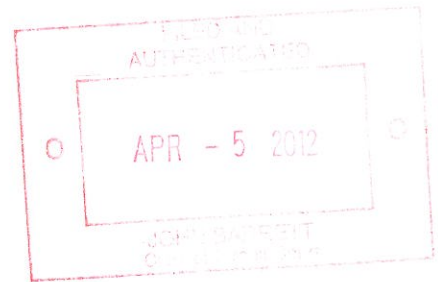
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COMPANY; ESI CONSTRUCTORS, INC., or in the
alternative, ESI GROUP USA, INC.; and A, B, C, D, and E,
fictitious names of other liability insurance companies,
subrogated parties, or other persons interested in subject
litigation,

Defendants.



AMENDED COMPLAINT

NOW COME the plaintiffs, Alexander W. Maldonado, **and Merton N. Rotter, as guardian ad litem for Eliana Maldonado and Ethan Maldonado, minors,** hereinabove captioned, by Merton N. Rotter, Esq. of WARSHAFSKY, ROTTER, TARNOFF & BLOCH, S.C., attorneys, and for claims against the defendants, allege, show and complain to the Court as follows:

I. CLAIM OF ALEXANDER MALDONADO

1. The plaintiff Alexander Maldonado is a sheet metal worker who resides at 2810 W. National Avenue, City of Milwaukee, Milwaukee County, Wisconsin. **Merton N. Rotter is the duly appointed guardian ad litem for Eliana Maldonado, born January 21, 2006, and her brother Ethan Maldonado, born on January 25, 2008, who reside with their father, Alexander Maldonado, and their mother at 2810 W. National Avenue, Milwaukee, Wisconsin.**

2. The subrogated plaintiff, Accident Fund Insurance Company of America (hereinafter "Accident Fund"), is upon information and belief a foreign insurance corporation with its registered agent, CT Corporation System, located at 8040 Excelsior Drive, Ste. 200, Madison, WI 53717. Accident Fund, at the time of the accident hereinafter described, was the worker compensation insurer for plaintiff's employer, Brenner Corporation, and claims a lien for medical expenses and disability benefits paid under the Wisconsin Worker Compensation Act.

3. Involuntary Plaintiff Milwaukee Public Schools, located at 5225 W. Vliet Street, in the City and County of Milwaukee, Wisconsin, as current employer of

Alexander Maldonado, through its medical plan, has paid medical and hospital expenses for the care and treatment of Alexander Maldonado for injuries suffered in the accident which is the subject of this litigation, for which it may have a right to reimbursement in the event of recovery of damages in this case.

4. Involuntary Plaintiff Badgercare Plus/Medicaid are divisions and plans under the Wisconsin Department of Health Services, c/o Office of Legal Counsel, One W. Wilson Street, Room 651, Madison, Wisconsin; Badgercare Plus/Medicaid are believed to have paid medical and hospital expenses for care and treatment of Alexander Maldonado for injuries suffered by him in the accident which is the subject of this litigation and for which Badgercare Plus/Medicaid may have a right to reimbursement in the event of the recovery of damages by said plaintiff in this litigation.

5. Involuntary Plaintiff Molina Healthcare of Wisconsin, located at 2400 South 102 Street in the city of West Allis, Wisconsin, is named as an involuntary plaintiff because it may have paid medical and hospital expenses for care and treatment of Alexander Maldonado for injuries suffered by him in the accident which is the subject of this litigation and for which Molina Healthcare of Wisconsin may have a right to reimbursement in the event of recovery of damages by plaintiff in this litigation.

6. The defendant, Spancrete Industries, Inc., or in the alternative, Spancrete, Inc., or in the alternative The Spancrete Group, Inc., (all of which are hereinafter referred to as "Spancrete,") are all Wisconsin corporations, with the same registered agent, Todd E. Backus, located at N16 W23415 Stoneridge Drive, P.O. Box 828,

Waukesha, WI 53188. At the time of the accident hereinafter described, Spancrete was a subcontractor during the construction of an addition to the Campione Bakery in Oak Creek, Milwaukee County, Wisconsin, in April of 2009.

7. The defendant, ESI **Constructors**, Inc., or in the alternative ESI Group USA, Inc., (hereinafter referred to as "ESI") are upon information and belief Wisconsin corporations, with their registered agent, Terry B. Frederiksen, located at 950 Walnut Ridge, Hartland, WI 53029. At all times hereinafter referred to, ESI was the general contractor for the remodeling and addition to the Campione Bakery in Oak Creek, Wisconsin at the time of the accident hereinafter described.

8. The defendant, Zurich American Insurance Company (hereinafter referred to as "Zurich") is a foreign insurance corporation licensed to do business in the state of Wisconsin, with its registered agent, CSC Lawyers Incorporating Service Co., located at 8040 Excelsior Drive #400, Madison, WI 53717. At all times herein referred to, Zurich had in full force and effect a policy **or policies** of general or commercial liability insurance protecting the "Spancrete" corporations **and the "ESI" corporations** named in alternative as defendants in this case, so that it is a proper party defendant herein.

9. Defendants A, B, C, D and E are the fictitious names of liability insurance companies, additional subrogated parties, or other persons having an interest in this litigation, who may be added as parties at a later date when their identity and interest are discovered.

10. On or about April 9, 2009, at or about 9:30 a.m., while the plaintiff and other employees of Brenner Corporation were involved in the construction and remodeling of the Campione Bakery in Oak Creek, Wisconsin, a Spancrete employee was attempting

to move or pry a Spancrete cinder block beam **which had been** lowered by a crane into place, when he chipped off a chunk of cinder block that fell about 15 feet and struck the plaintiff on his helmet and shoulder.

11. At said time and place, Spancrete, as *respondeat superior* of its employee, was negligent in the manner in which their employee attempted to guide or fit the cinder block beam into position, and was further negligent in failing to bar other workers on the job from entering an area of danger by sealing off, by tape or otherwise, a potentially dangerous work area while its beam was being lowered and placed into position.

12. At said time and place, ESI was the general contractor for the remodeling and addition to the Campione Bakery in Oak Creek, Wisconsin, and it was negligent and violated the Wisconsin Safe Place statute, by failing to seal off an area of potential danger for workers on this job site from the lowering and placement of a cinder block beam into position by a subcontractor to prevent the risk of accident during that activity and by failing to provide a safe place of employment for other workers on this job site.

13. By reason of the negligence of Spancrete and ESI and said accident, the plaintiff suffered personal injuries to his head, neck, and shoulder, for which he received medical and hospital care; he has incurred medical expense, suffered loss of earnings, and endured pain, suffering, and disability to date; and the plaintiff is informed and verily believes that he will have future pain, suffering, and permanent disability; future loss of earning capacity; and future medical expenses, all to his damage.

II. CLAIM OF THE MINOR CHILDREN

14. Merton N. Rotter, as guardian ad litem for the two minor children of Alexander Maldonado repeats and realleges as though fully set forth all of the allegations contained in paragraphs 1 through 13.

15. By reason of the negligence of defendants and the accident and then injuries to Alexander Maldonado, Eliana Maldonado and Ethan Maldonado have each suffered a loss of society and companionship resulting from the injuries sustained by their father, both to date and in the future, to their damage.

WHEREFORE, plaintiffs demand judgment against the defendants, jointly and severally, as follows:

- (a) In favor of Alexander Maldonado for personal injury damages plus taxable costs.
- (b) In favor of Merton N. Rotter, as guardian ad litem for Eliana Maldonado and Ethan Maldonado, against all of the defendants for each minor child's loss of society and companionship, plus taxable costs.
- (c) The subrogation rights of Accident Fund Insurance Company of America be determined and protected herein.
- (d) The subrogation rights, if any, of the involuntary plaintiffs, be determined and protected herein.

Dated: April 4, 2012

WARSHAFSKY, ROTTER,
TARNOFF & BLOCH, S.C.
Attorneys for Plaintiffs



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