

CIVIL

**U.S. District Court
Eastern District of California - Live System (Sacramento)
CIVIL DOCKET FOR CASE #: 2:10-cv-01224-FCD-GGH**

Regents of the University of California v. Bernzomatic, et al.,

Assigned to: Judge Frank C. Damrell, Jr

Referred to: Magistrate Judge Gregory G. Hollows

Demand: \$167,462,000

Cause: 28:1332 Diversity-Personal Injury

Date Filed: 05/19/2010

Jury Demand: Defendant

Nature of Suit: 365 Personal Inj. Prod.

Liability

Jurisdiction: Diversity

Plaintiff

Regents of the University of California

represented by **Henry David Rome**
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LEAD ATTORNEY
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V.

Defendant

Bernzomatic
an Unincorporated Division of Irwin Industrial Tool Company

represented by **Michael C. Osborne**
Archer Norris
2033 North Main Street
Suite 800
Walnut Creek , CA 94596
925-952-5499
Fax: 925-930-6620
Email: mosborne@archernorris.com
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Defendant

Irwin Industrial Tool Company

represented by **Michael C. Osborne**
(See above for address)
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Defendant

Newell Rubbermaid, Inc.

represented by **Michael C. Osborne**
(See above for address)

*ATTORNEY TO BE NOTICED***Defendant****W.W. Grainger, Inc.**represented by **Michael C. Osborne**

(See above for address)

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/19/2010	1	NOTICE of REMOVAL from Superior Court of California, Yolo County, case number CV10-0845. by Bernzomatic, Irwin Industrial Tool Co., Newell Rubbermaid Inc., W.W. Grainger, Inc. (Osborne, Michael) Modified on 5/19/2010 (Benson, A.). (Entered: 05/19/2010)
05/19/2010	2	CIVIL COVER SHEET by Bernzomatic, Irwin Industrial Tool Co., Newell Rubbermaid Inc., W.W. Grainger, Inc. (Osborne, Michael) (Entered: 05/19/2010)
05/19/2010		RECEIPT number #CAE200026370 \$350.00 fbo Bernzomatic by Michael C. Osborne on 5/19/2010. (Benson, A.) (Entered: 05/19/2010)
05/19/2010	4	CIVIL NEW CASE DOCUMENTS ISSUED; (Attachments: # 1 Consent Form, # 2 VDRP Form) (Benson, A.) (Entered: 05/19/2010)
05/19/2010	5	DEMAND for TRIAL by JURY by Bernzomatic, Irwin Industrial Tool Company, Newell Rubbermaid, Inc., W.W. Grainger, Inc.. (Osborne, Michael) (Entered: 05/19/2010)

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7 Attorneys for Defendants Bernzomatic, an
unincorporated division of Irwin Industrial Tool
8 Company (also erroneously sued as Newell
Rubbermaid, Inc.), Irwin Industrial Tool Company,
and W.W. Grainger, Inc.
9

10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA
12

13 THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA,

14 Plaintiff,

15 v.

16 BERNZOMATIC, an Unincorporated
17 Division of IRWIN INDUSTRIAL TOOL
COMPANY, IRWIN INDUSTRIAL
18 TOOL COMPANY, NEWELL
RUBBERMAID, INC., and W.W.
19 GRAINGER, INC., and DOES 1 through
100,

20 Defendants.
21

Case No. _____

**NOTICE OF REMOVAL OF CIVIL
ACTION FROM THE SUPERIOR COURT
OF CALIFORNIA, COUNTY OF YOLO,
CASE NO. CV10-0845**

[28 USC §1441(b)]

22 **TO THE HONORABLE JUDGES AND CLERK OF THE COURT:**

23 **PLEASE TAKE NOTICE** that defendants Bernzomatic, an unincorporated division of
24 Irwin Industrial Tool Company (also erroneously sued herein as Newell Rubbermaid, Inc.), Irwin
25 Industrial Tool Company, Inc., and W.W. Grainger, Inc., (collectively referred to as
26 “defendants”) hereby remove to this Court the state action described below. As shown below,
27 this civil action concerns citizens of different states and the amount in controversy exceeds
28 \$75,000; therefore, this Court has original jurisdiction under 28 U.S.C. section 1332, and the

FILED
YOLO SUPERIOR COURT

APR 29 2010
L. CORREIA

By _____
Deputy

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5 Attorneys for Plaintiff
6 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF YOLO

10
11 THE REGENTS OF THE UNIVERSITY OF
12 CALIFORNIA,

13 Plaintiff,

14 vs.

15 BERNZOMATIC, an Unincorporated Division
16 of IRWIN INDUSTRIAL TOOL COMPANY,
17 IRWIN INDUSTRIAL TOOL COMPANY,
NEWELL RUBBERMAID, INC., and W.W.
GRAINGER, INC., and DOES 1 through 100,
inclusive,

18 Defendants.

Case No.: CV10 - 845

**FIRST AMENDED COMPLAINT FOR
RECOVERY OF WORKERS'
COMPENSATION BENEFITS (LABOR
CODE SECTION 3852, et seq.)**

19 COMES NOW Plaintiff THE REGENTS OF THE UNIVERSITY OF CALIFORNIA and
20 for a cause of action alleges:

21 1. At all times herein mentioned, Plaintiff THE REGENTS OF THE UNIVERSITY
22 OF CALIFORNIA was, and is, an entity doing business pursuant to the laws of the State of
23 California and the employer of Mr. Scott Callaway and Mr. James Bartlett, hereafter
24 "CALLAWAY" and "BARTLETT."

25 2. As a California employer, Plaintiff was, and is, obligated to pay workers'
26 compensation benefits to its employees, including CALLAWAY and BARTLETT herein, for

1 work-related injuries.

2 3. Plaintiff is informed and believes, and thereon alleges, that at all times herein
3 mentioned Defendant BERNZOMATIC was an unincorporated division of IRWIN INDUSTRIAL
4 TOOL COMPANY and was qualified to do business, and in fact doing business, in the State of
5 California. Plaintiff is informed and believes, and thereon alleges, that at all times herein
6 mentioned Defendant IRWIN INDUSTRIAL TOOL COMPANY was a business entity, form
7 unknown, qualified to do business, and in fact doing business, in the State of California. Plaintiff
8 is further informed and believes, and thereon alleges, that at all times herein mentioned Defendants
9 W.W. GRAINGER INC. and NEWELL RUBBERMAID INC. were corporations licensed to do
10 business, and in fact doing business, in the State of California. The incident that is the subject
11 matter of this complaint occurred in Yolo County, California.

12 4. The true names and capacities, whether individual, corporate, associate or otherwise
13 of defendants DOES 1 through 100 are unknown to Plaintiff, who therefore sues such defendants
14 by such fictitious names. Plaintiff will amend this complaint to show their true names and
15 capacities when ascertained. Plaintiff is informed and believes, and thereon alleges, that each of
16 the defendants DOES 1 through 100 are responsible under law in some manner – negligently, in
17 warranty, strictly or otherwise – for the events and happenings herein referred to, and by law
18 thereby caused injuries and damages to Plaintiff and Plaintiff's employees CALLAWAY and
19 BARTLETT as herein alleged. Plaintiff prays leave of this Court to amend this Complaint to set
20 forth the true names and capacities of said fictitious defendants when the same have been
21 ascertained, together with appropriate charging allegations.

22 5. At all times herein mentioned, each defendant was the employer, employee, agent,
23 principal, corporate parent, cooperative member, and/or joint venturer of each with and/or of the
24 other defendants, and acting in the course and scope of said employment, agency, corporation,
25 cooperative and/or joint venture. All Defendants are, therefore, vicariously liable for the acts and
26 omissions of all other defendants.

1 6. At all times herein mentioned, all defendants were engaged in the business of
2 designing, manufacturing, fabricating, assembling, distributing, servicing, maintaining, marketing,
3 promoting, and/or selling BernzOmatic Mapp Gas canisters and/or Lenox solder torches/tips to be
4 used in conjunction with each other. Defendants designed, manufactured, fabricated, assembled,
5 distributed, serviced, maintained, marketed, promoted, and/or sold a BernzOmatic Mapp Gas
6 canister and/or Lenox solder torch/tip to Plaintiff, University of California, Davis Facilities
7 Operation and Maintenance department.

8 7. On or about September 2, 2008, Plaintiff's employees CALLAWAY and
9 BARTLETT were in the course and scope of their employment with the Plaintiff and were working
10 in a mechanical attic space in an animal facility on the University of California, Davis campus.
11 BARTLETT was using a BernzOmatic Mapp Gas canister and/or Lenox solder torch/tip assembly
12 in a reasonably foreseeable manner when the assembly suddenly and unexpectedly failed and
13 exploded, resulting in burn injuries to Plaintiff's employees CALLAWAY and BARTLETT.

14 8. The BernzOmatic Mapp Gas canister and/or Lenox solder torch/tip being used by
15 BARTLETT at the time of the subject incident were defective and unsafe for their intended
16 purpose in that they were designed, manufactured, fabricated, assembled, distributed, serviced,
17 maintained, marketed, promoted, and/or sold in such a fashion as to make it likely that they would
18 fail and/or explode during foreseeable use.

19 9. At all relevant times, the BernzOmatic Mapp Gas canister and/or Lenox solder
20 torch/tip being used by BARTLETT at the time of the subject incident were defectively designed
21 by Defendants, and each of them, thereby causing injury and harm to Plaintiff's employees
22 CALLAWAY and BARTLETT.

23 10. At all relevant times, the BernzOmatic Mapp Gas canister and/or Lenox solder
24 torch/tip being used by BARTLETT at the time of the subject incident were defectively
25 manufactured, fabricated, assembled, distributed, serviced, maintained, marketed, promoted and/or
26

1 sold by Defendants, so as to cause severe injury and harm to Plaintiff's employees CALLAWAY
2 and BARTLETT.

3 11. At all relevant times, the BernzOmatic Mapp Gas canister and/or Lenox solder
4 torch/tip being used by Plaintiff's employee BARTLETT at the time of the subject incident were
5 defective as a result of Defendants' failure to give adequate warning of the risk of failure and/or
6 explosion under foreseeable use conditions, thereby injuring foreseeable users and/or bystanders
7 such as Plaintiff's employees CALLWAY and BARTLETT.

8 12. At all relevant times, Defendants, and each of them, had specific knowledge of the
9 risk of failure and/or explosion of the BernzOmatic Mapp Gas canister and/or Lenox solder
10 torch/tip being used by Plaintiff's employee BARTLETT at the time of the subject incident, and/or
11 should have known the risk by application of scientific knowledge available at the time of
12 manufacture of the BernzOmatic Mapp Gas canister and/or Lenox solder torch/tip being used by
13 Plaintiff's employee BARTLETT at the time of the subject incident.

14 13. As a direct result of Defendants' conduct, both in negligence and strict liability, of
15 designing, manufacturing, fabricating, assembling, distributing, servicing, maintaining, marketing,
16 promoting, and/or selling the BernzOmatic Mapp Gas canister and/or Lenox solder torch/tip being
17 used by employee BARTLETT at the time of the subject incident and placing said item into the
18 stream of commerce, Plaintiff's employees, CALLAWAY and BARTLETT, both sustained
19 personal injuries, disabling them, and requiring them to seek medical and hospital treatment and
20 care.

21 14. As a further direct and proximate result of the negligence, strict liability and
22 wrongful conduct of Defendants, and each of them, and of the injuries sustained by Plaintiff's
23 employee BARTLETT herein, and under and pursuant to California Labor Code §3600, Plaintiff
24 has expended with respect to BARTLETT the sum of \$32,938.07 in workers' compensation
25 benefits, to date, as required by the workers' compensation laws of the State of California. Said
26 sums so paid were, and are, reasonable.

1 15. As a further direct and proximate result of the negligence, strict liability and
2 wrongful conduct of Defendants, and each of them, and of the injuries sustained by Plaintiff's
3 employee CALLAWAY herein, and under and pursuant to California Labor Code §3600, Plaintiff
4 has expended with respect to CALLAWAY the sum of \$134,524.48 in workers' compensation
5 benefits, to date, as required by the workers' compensation laws of the State of California. Said
6 sums so paid were, and are, reasonable.

7 16. Plaintiff is informed and believes, and upon such information and belief alleges, that
8 it has and will be required to pay further and additional sums for the medical care and treatment of
9 both CALLAWAY and BARTLETT for disability indemnity benefits, for vocational rehabilitation
10 benefits, and for other benefits required by the workers' compensation laws of the State of
11 California, and Plaintiff will ask leave of the court to amend this complaint for recovery of
12 workers' compensation benefits to show the true amounts of each expenditure once said amounts
13 are ascertained.

14 WHEREFORE, Plaintiff THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
15 prays for judgment against Defendants and each of them, as follows:

- 16 1. For the amount of \$32,938.07 as to employee JAMES BARTLETT, together with
17 any additional amounts Plaintiff has or may be required to pay under the workers' compensation
18 laws of the State of California;
- 19 2. For the amount of \$134, 524.48 as to employee SCOTT CALLAWAY, together
20 with any additional amounts Plaintiff has or may be required to pay under the workers'
21 compensation laws of the State of California;
- 22 3. For costs of suit herein;
- 23 4. For prejudgment interest;
- 24 5. For reasonable attorneys' fees;
- 25 6. For recovery of all damages to which Plaintiff's employees are entitled under law;


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7. For all other relief that the Court deems just and proper.

DATED: April 27, 2010

HOWARD ROME MARTIN & RIDLEY, LLP

By: 

HENRY D. ROME
SHAWN M. RIDLEY
Attorneys for Plaintiff
THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

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