

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

A. L. Lee Corporation,
Plaintiff,

v.

Civil Action No. 5:11-cv-0345

Edward V. Roscioli and
Willem F. Van Basten,
Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW the Plaintiff, A.L. Lee Corporation ["ALL"], and states by way of Complaint against Defendants, Edward V. Roscioli ["Roscioli"] and Willem F. Van Basten ["Van Basten"], as follows:

Nature of the Case

1. This is an action for a declaratory judgment of non-infringement of a United States patent. This action is commenced pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201, and arises under the United States patent laws, 35 U.S.C. § 1, *et seq.*

Parties

2. Plaintiff, ALL, is a Pennsylvania corporation with its principal place of business being at 2075 Lester Highway, Lester, Raleigh County, West Virginia. ALL is engaged in the design, engineering, manufacture and sale of mining equipment including underground mine rescue chambers.

3. Defendant, Roscioli, is an individual and a citizen and resident of the Commonwealth of Pennsylvania. Roscioli is the owner and chief executive officer of ChemBio Shelter, Inc. (“ChemBio”), a Delaware Corporation which operates a manufacturing facility at 416 Industrial Park Road, Beaver, Raleigh County, West Virginia at which it produces an underground mine refuge chamber known as the LifeShelter®. Roscioli is a named inventor and co-owner of United States Patent No. 7,941,971 for Inflatable Shelter for Use in Hostile Environment which issued May 17, 2011 [“the ‘971 patent”].

4. Defendant, Van Basten, is an individual and a citizen and resident of the Commonwealth of Pennsylvania. Van Basten is also the principal and owner of Zumro, Inc. (“Zumro”), a Florida Corporation engaged in the business of manufacturing and distributing inflatable tents which are used in the manufacture of inflatable underground mine rescue chambers. Van Basten has distributed and continues to distribute, through Zumro, inflatable tents in Raleigh County, West Virginia. Van Basten is a named inventor and co-owner of the '971 patent.

Jurisdiction and Venue

5. This action arises under the patent laws of the United States. 35 U.S.C. §1, *et seq.* This Court enjoys subject matter jurisdiction over this controversy pursuant to 28 U.S.C. §§ 1331 and 1338, and is empowered to grant declaratory relief pursuant to 28 U.S.C. § 2201. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(b) in that a substantial part of the events giving rise to the claim occurred in or a substantial part of the property that is the subject of

action is situated in this judicial district. Moreover, at least one of the defendants may be found in this judicial district.

COUNT I
Declaratory Judgment of Non-Infringement
of U.S. Patent No. 7,941,9716.

6. In the spring of 2006, Roscioli approached ALL to help Roscioli and Van Basten, doing business respectively as ChemBio and Zumro, to develop an inflatable rescue shelter for use in underground mines. This rescue shelter was to have an inflatable tent in a sturdy box.

7. ALL agreed to work with Roscioli, Van Basten and their respective companies, Chembio and Zumro to develop an inflatable underground mine rescue shelter. Over several months, ALL's engineers and other employees worked with Roscioli and Van Basten to build a prototype and commercialize an inflatable underground mine rescue shelter. The vast majority of this work was done at ALL's facilities in Raleigh County, West Virginia using personnel and other resources provided by ALL.

8. By November 2006, ALL had built a prototype of the inflatable underground mine rescue shelter using a steel box. The inflatable underground mine rescue shelter was publicly unveiled on November 30, 2006 at Tamarack Convention Center in Raleigh County, West Virginia and was known as the LifeShelter® pursuant to a trademark owned by Zumro. Invitations to the unveiling of LifeShelter® were sent to the public which represented that the LifeShelter® was developed jointly by ALL, ChemBio and Zumro. The prototype of the LifeShelter® also listed the names of ALL, ChemBio and Zumro.

9. Subsequently, ALL exclusively handled the manufacture and sale of the LifeShelter® with the respective companies of Roscioli and Van Basten, ChemBio and Zumro, providing scrubbing curtains and tents for use in the manufacture of the LifeShelter®.

10. On November 23, 2007, Roscioli and Van Basten filed a patent application for an Inflatable Shelter for Use in Hostile Environment in the United States Patent and Trademark office. This application was assigned Serial No. 11/944,477. The '971 patent issued from this application naming Roscioli and Van Basten as the inventors.

11. ALL currently manufactures and sells an inflatable underground mine rescue shelter which is sold under the name A.L. Lee Rescue Chamber. The manufacture and sale of the A.L. Lee Rescue Chamber by ALL is the result of Roscioli, through ChemBio, undertaking to manufacture and sell the LifeShelter®, without ALL, in the fall of 2008.

12. ALL is currently involved in a lawsuit in the Circuit Court of Raleigh County, West Virginia filed by ChemBio in which ChemBio has alleged that ALL has misappropriated ChemBio's intellectual property including, but necessarily limited to, certain trade secrets arising from ALL's manufacture and sale of the A.L. Lee Rescue Chamber.

13. ALL learned of the impending issue of the '971 patent during the pendency of the ChemBio lawsuit.

14. After ALL learned that a patent would issue to Roscioli and Van Basten, ALL's counsel inquired of lawyers representing ChemBio what Roscioli

and/or ChemBio intended to do after the patent issues. ALL was advised that it had not yet been determined whether the holders of the '971 patent would take action against the manufacture or the users of the A.L. Lee Rescue Chamber.

15. The claims of the '971 patent recite structure and features of the claimed emergency shelter in a mine that were conceived and developed by ALL's engineer, Jason Wilkerson. Consequently, Jason Wilkerson is a co-inventor of the '971 patent.

16. Jason Wilkerson has an obligation to assign to ALL rights in inventions that he made as an employee of ALL.

17. Because the invention claimed in the '971 patent was developed at ALL's facilities, using ALL's resources, ALL has shop rights to make, use and sell the shelter disclosed and claimed in the '971 patent.

18. Because Jason Wilkerson is a co-inventor and because ALL has shop rights, ALL may make, use and sell the A.L. Lee Rescue Chamber without infringing the '971 patent.

19. ALL reasonably apprehends that Defendants will commence infringement litigation against ALL and/or its customers alleging that the manufacture, sale and/or use of the A.L. Lee Rescue Chamber infringes the '971 patent.

20. Consequently, there is an actual case and controversy between ALL and Defendants concerning whether ALL infringes any valid claim of the '971 patent.

WHEREFORE, ALL prays that this Honorable Court grant ALL the following relief:

A. Declare that the manufacture, use and sale of the A.L. Lee Rescue Chamber by ALL does not infringe any valid claim of U.S. Patent No. 7,941,971.

B. If the facts demonstrate that this is an exceptional case pursuant to 35 U.S.C. § 285, order Defendants to reimburse ALL for its attorneys' fees and costs reasonably incurred in prosecuting this action; and

C. Award ALL such further relief as this Court deems just and reasonable under the circumstances.

Jury Demand

ALL hereby demands trial by jury of all issues properly so triable.

Dated: May 17, 2011

Respectfully submitted,

/s/ Jeffrey M. Wakefield
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