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September 18, 2017

Clerk, Law Division
Atlantic County Superior Court
1201 Bacharach Boulevard
Atlantic City, New Jersey 08401

RE: CAHILL v. SUNSETTER PRODUCTS
OUR FILE NUMBER: 3634-P

Dear Sir/Madam:

Enclosed please find the following:

- (xx) Original and copy of Complaint and Jury Demand
- (xx) Case Information Statement
- (xx) Self-Addressed Stamped Envelope
- (xx) Check in the amount of \$250.00

Would you please:

- (xx) File and assign a docket number.
- (xx) Return a filed copy

Very truly yours,

Paul R. D'Amato

PAUL R. D'AMATO

PRD/lrp
Enclosure

CC: Rose Ann Cahill – via email
Rose Ann Cahill-Pinter – via email

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Attorneys for Plaintiff

**ROSE ANN CAHILL,
INDIVIDUALLY AND AS THE
EXECUTRIX OF THE ESTATE OF
HER LATE HUSBAND DANIEL J.
CAHILL IV,**

Plaintiff

vs.

**SUNSETTER PRODUCTS, A
LIMITED PARTENERSHIP; ELMER
DOOR COMPANY, INC; JOHN
DOE; JANE DOE; ABC, LLC AND
XYZ CORP,**

Defendants

**SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY-LAW DIVISION
DOCKET NUMBER:**

Civil Action

COMPLAINT AND JURY DEMAND

Plaintiff Rose Ann Cahill in her individual capacity and as Executrix of the Estate of her late husband, Daniel J. Cahill IV residing in Ventnor City, Atlantic County, New Jersey by way of Complaint and Jury Demand, says:

COUNT ONE

1. Rose Ann Cahill and her late husband purchased the retractable awning on July 7, 2015 from Defendant Elmer Door Company, Inc.
2. The subject awning was installed by Elmer Door Company, Inc. on August 13, 2015 at the Cahill residence to cover a rear porch on the second floor.
3. Sometime in October-November 2015 the decedent Daniel Cahill IV had retracted the subject awning, placed a "boot" over the awning and placed six bungee cords around the retractable awning to secure the awning until the following spring of 2016.

4. The aforesaid boot and six bungee cords were part of the product that had been supplied by defendant Sunsetter Products, a Limited Partnership, to Elmer Door Company, Inc.

5. Before April 27, 2017, Daniel J. Cahill IV would use a remote control to open and close the retractable awning. This remote control was supplied by defendant Sunsetter Products, a Limited Partnership.

6. Before April 27, 2017, after opening or closing the retractable awning Daniel J. Cahill IV would place the remote control in a cabinet in the kitchen immediately adjacent to the porch which was covered by the subject awning.

7. Defendant Sunsetter Products, a Limited Partnership, has its principal place of business located in the State of Massachusetts at 184 Charles Street. Malden, MA 02148-6714.

8. Defendant Elmer Door Company, Inc. is a corporation organized pursuant to the laws of the State of New Jersey with a principal place of business located at 465 Route 40, Elmer, New Jersey 08318.

9. On April 27, 2017, Daniel J. Cahill IV was at his place of residence in Ventnor City, Atlantic County, New Jersey, and was in the process of removing the bungee cords from the subject retractable awning.

10. Daniel J. Cahill, IV, was almost finished removing all of the bungee cords when without warning the subject awning shot out with such great force that it hit the Plaintiff and caused him to fall approximately twelve feet to the ground.

11. In order for the decedent, Daniel J. Cahill, IV, to have removed the subject bungee cord he would have had to been standing on the third step of a stepladder which is approximately three feet off the deck.

12. The impact was so violent that Daniel J. Cahill IV's body was hurled backwards which resulted in his hitting a metal plant bracket affixed to an adjacent storage cabinet.

13. Daniel J. Cahill IV landed on a ceramic planter that was filled with dirt.

14. The Sunsetter Retractable Awning Owner's Manual Installation and Instructions that the Cahills received is dated February 3, 2015.

15. On or before March 2, 2016, defendant Sunsetter Products published another Retractable Awning Owner's Manual and Installation Instructions.

16. Page 28 of said manual referenced as "Appendix F-HOW TO SAFELY REMOVE THE BUNGEE CORDS FROM THE COVER" states in part as follows:

WARNING: IF YOUR COVER IS SECURED TO THE AWNING FRAME OR ANY OTHER TIEDOWNS, FAILURE TO FOLLOW THESE INSTRUCTIONS WHEN REMOVING THE BUNGEE CORDS FROM THE COVER COULD RESULT IN PERSONAL INJURY...**WARNING:** DO NOT PLACE THE LADDER OR STAND IN FRONT OF THE AWNING. DOING SO COULD RESULT IN PERSONAL INJURY.

17. Attached hereto and made a part hereof as Exhibit A is page 28 of the referenced manual.

18. The Cahill's purchased the subject Sunsetter awning on July 7, 2015.

19. As previously noted herein the defendant Elmer Door Company installed the subject awning at the Cahill residence on August 13, 2015.

20. On August 11, 2015, defendant Sunsetter changed the warning language regarding the removal of bungee cords.

21. Both defendant Sunsetter and Elmer knew before the installation of the subject Sunsetter awning at the Cahill residence that the warning instructions regarding the removal of bungee cords had been changed and the revised warning was never conveyed to the plaintiff.

22. Daniel J. Cahill IV was caused to die on April 27, 2017, as a result of the injuries sustained in the aforementioned fall.

23. Daniel J. Cahill IV was the retired Chief of the Ventnor City Fire Department.

24. As the retired Fire Chief of the City of Ventnor, Mr. Cahill was extensively trained in proper use of a ladder.

25. The subject awning came with a user manual that did not warn against any potential dangers of unhooking the bungee cords.

26. The user manual did not warn to keep your head below the awning when removing the bungee cord.

27. The aforesaid awning was designed, developed, manufactured, tested, marketed, supplied, and distributed by defendant Sunsetter to retailers such as defendant Elmer.

28. As the designer, developer, manufacturer, tester, marketer, supplier, distributor, and seller of the subject product, defendant Sunsetter was

under a duty to exercise due care in the designing, developing, manufacturing, testing, marketing, supplying, distributing, and selling of the aforesaid awning.

29. The subject awning was sold by the defendant Sunsetter in a defective condition that was unreasonably dangerous to users including Daniel J. Cahill IV.

30. Prior to April 27, 2017, defendant Sunsetter through its employees, agents and representatives had actual and/or constructive knowledge that the subject awning posed a risk of serious injury to consumers including Daniel J. Cahill IV of a defect that caused the awning to suddenly and unexpectedly shoot out with great force upon the bungee cords being removed.

31. Defendant Sunsetter failed to warn Daniel J. Cahill IV that using the awning for the purpose which it was intended created an unreasonable hazard.

32. Defendant Sunsetter failed to issue a warning or recall of the aforesaid awning after learning of other incidents in which the product caused injuries.

33. The subject awning installed by Elmer was not reasonably fit, suitable or safe for its intended purposes because: (a) said awning deviated from the design, specifications, formulae for performance standards of defendant Sunsetter and from otherwise identical awnings manufactured to the same manufacturing specifications or formulae, and (b) because the aforesaid awning failed to contain adequate warnings or instructions, and (c) because the aforesaid awning was designed in a defective manner.

34. After the design, development, manufacturing, testing, marketing, supplying, distributing, and selling both defendant Sunsetter and defendant

Elmer acquired knowledge of the defective condition of the subject awning and were negligent in failing to properly warn owners of the subject awning including Daniel J. Cahill IV and foreseeable users of the subject awning of the defective conditions of said awning.

35. The aforesaid conduct was the proximate cause of Daniel J. Cahill IV's injuries and subsequent death.

36. At the aforesaid time and place Daniel J. Cahill IV used the aforesaid awning in the manner for which it was intended and in the manner reasonably foreseeable by the defendants.

37. Defendants Sunsetter and Elmer are strictly liable to the plaintiff for the injuries and damages stated herein.

WHEREFORE, Plaintiff Rose Ann Cahill in her individual capacity and as Executrix of her late husband's estate demands judgment against Defendants Sunsetter and Elmer for compensatory damages, interest, attorney's fees and costs of suit.

COUNT TWO

1. Plaintiffs repeat the allegations of the previous Count as if same were set forth at length herein.

2. The employees and agents of Defendant Elmer negligently installed the subject awning at the Cahill residence.

3. Such negligent installation was the proximate cause of the aforesaid accident resulting in the death of Daniel J. Cahill IV.

WHEREFORE, Plaintiff Rose Ann Cahill in her individual capacity and as Executrix of her late husband's estate demands judgment against Defendants



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Lagrange Harbor Township, NJ 08234

Sunsetter and Elmer for compensatory damages, interest, attorney's fees and costs of suit.

COUNT THREE

1. Plaintiffs repeat the allegations of the previous Counts as if same were set forth at length herein.

2. From the initial impact of the awning upon the decedent's body until the time he passed away Daniel J. Cahill IV was caused to experience conscious pain and suffering for which the Plaintiffs seek compensation on behalf of his estate.

3. Plaintiffs further seeks compensation on behalf of the estate for the loss of enjoyment of life that decedent experienced from the occurrence of the aforesaid impact until the time Daniel J. Cahill IV was declared deceased.

4. **WHEREFORE**, Plaintiff Rose Ann Cahill in her individual capacity and as Executrix of her late husband's estate demands judgment against Defendants Sunsetter and Elmer pursuant to the Survivorship Statute of the New Jersey for damages, interest, attorney's fees and costs of suit.

COUNT FOUR

1. Plaintiffs repeat the allegations of the previous Counts as if same were set forth at length herein.

2. As a result of the death of Daniel J. Cahill IV Plaintiff and her adult children, Rose Ann Cahill and Daniel J. Cahill IV are deprived of the services, society and companionship of the decedent for which they claim damages.

3. Daniel J. Cahill IV as a result of being a retired firefighter was receiving a State pension.

4. After the death of Daniel J. Cahill, IV, the amount of money that his surviving wife received was substantially reduced.

5. As a result of the death of Daniel J. Cahill IV Plaintiff Roseann Cahill is entitled to damages for the loss of household services that would have been provided by Daniel J. Cahill IV and she, along with her adult children, seek compensation for the loss of advice, counsel, support and companionship and society that the late Daniel J. Cahill IV would have provided had he lived.

WHEREFORE, Plaintiff Rose Ann Cahill in her individual capacity and as Executrix of her late husband's estate demands judgment against Defendants Sunsetter and Elmer for damages, interest, attorney's fees and costs of suit.

COUNT FIVE

1. Plaintiff Rose Ann Cahill in her individual capacity repeats the allegations of the previous Counts as if same were set forth at length herein.

2. At the aforesaid time and place Rose Ann Cahill heard a loud noise while she was inside the Cahill residence.

3. Upon hearing the noise she went outside to the second floor porch and saw that her husband Daniel was laying on the ground.

4. She ran down the steps to provide aid and comfort to her husband who was bleeding profusely as a result of injuries sustained in the subject fall.

5. The Plaintiff Rose Ann Cahill has and is experiencing severe psychological anxiety and stress as a result of having witnessed her husband's bleeding on the ground in their backyard.

6. The Defendants are responsible for the negligent infliction of emotional distress as a result of the conduct stated in the previous Counts.



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388 Harbor Township, NJ 08234

7. Plaintiff Rose Ann Cahill will have to receive psychological counseling periodically because of what she witnessed.

WHEREFORE, Plaintiff Rose Ann Cahill in her individual capacity demands judgment against Defendants Sunsetter and Elmer for damages, interest, attorney's fees and costs of suit.

COUNT SIX

1. Plaintiff Rose Ann Cahill repeats the allegations of the previous Counts as if same were set forth at length herein.

2. At all times relevant hereto both Defendants acted with deliberate indifference to the welfare and safety of Daniel J. Cahill IV.

3. The Defendants' acts or omissions as previously noted herein were actuated by actual malice or accompanied by a wanton and willful disregard of persons who perceivable may be harmed by those acts or omissions. One such person was Daniel J. Cahill IV.

4. Plaintiffs seek damages for the intentional acts and omissions of the Defendants pursuant to New Jersey Statute 2A:15-5.12.


WHEREFORE, Plaintiff Rose Ann Cahill, in her individual capacity as Executrix of her late husband's estate, demands judgment against the Defendants Sunsetter and Elmer for punitive damages, attorney's fees, interest and costs of suit.

JURY DEMAND

Plaintiffs demand a jury trial.

NOTICE OF TRIAL COUNSEL

Paul R. D'Amato, Esquire is designated as Trial Counsel pursuant to Rule 4:25-4.

D'AMATO LAW FIRM
By: 
Paul R. D'Amato, Esquire

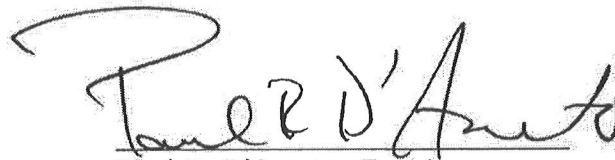
Dated: September 15, 2017

CERTIFICATION

Paul R. D'Amato, Esquire, of full age, hereby certifies:

1. I am a member of the firm of D'AMATO LAW FIRM and am entrusted with the preparation and Trial of this case.
2. This case is not subject to any other Court action or Arbitration proceeding.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Paul R. D'Amato, Esquire

Dated: September 15, 2017

CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(c)




I, Paul R. D'Amato, Esquire, certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).



Paul R. D'Amato, Esquire

Dated: September 15, 2017

Appendix XII-B1

	<h2 style="margin:0;">CIVIL CASE INFORMATION STATEMENT (CIS)</h2> <p style="margin:0;">Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed</p>		FOR USE BY CLERK'S OFFICE ONLY PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK NO. AMOUNT: OVERPAYMENT: BATCH NUMBER:
	ATTORNEY / PRO SE NAME PAUL R. D'AMATO, ESQUIRE	TELEPHONE NUMBER (609) 926-3300	COUNTY OF VENUE Atlantic <input type="checkbox"/>
	FIRM NAME (if applicable) D'AMATO LAW FIRM		DOCKET NUMBER (when available)
	OFFICE ADDRESS 2900 FIRE ROAD, SUITE 200 EGG HARBOR TOWNSHIP, NJ 08234		DOCUMENT TYPE COMPLAINT
			JURY DEMAND <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
NAME OF PARTY (e.g., John Doe, Plaintiff) ROSE ANN CAHILL INDIVIDUALLY AND AS THE EXECUTRIX OF THE ESTATE OF DANIEL J. CAHILL, IV		CAPTION CAHILL v. SUNSETTER PRODUCTS	
CASE TYPE NUMBER (See reverse side for listing) 606	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.	
RELATED CASES PENDING? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, LIST DOCKET NUMBERS	
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN	
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.			
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION			
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> Yes <input type="checkbox"/> No			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION			
	DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION	
	WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, FOR WHAT LANGUAGE?	
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .			
ATTORNEY SIGNATURE 			



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)

- | | |
|--------------------------------------------|-----------------------------------------------------------|
| 271 ACCUTANE/ISOTRETINOIN | 292 PELVIC MESH/BARD |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 293 DEPUY ASR HIP IMPLANT LITIGATION |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL | 295 ALLODERM REGENERATIVE TISSUE MATRIX |
| 282 FOSAMAX | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 285 STRYKER TRIDENT HIP IMPLANTS | 297 MIRENA CONTRACEPTIVE DEVICE |
| 286 LEVAQUIN | 299 OLMESARTAN MEDOXOMIL MEDICATIONS/BENICAR |
| 287 YAZ/YASMIN/OCELLA | 300 TALC-BASED BODY POWDERS |
| 289 REGLAN | 601 ASBESTOS |
| 290 POMPTON LAKES ENVIRONMENTAL LITIGATION | 623 PROPECIA |
| 291 PELVIC MESH/GYNECARE | 624 STRYKER LFIT CoCr V40 FEMORAL HEADS |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category Putative Class Action Title 59

EXHIBIT A

APPENDIX F - How to Safely Remove the Bungee Cords from the Cover

WARNING: IF YOUR COVER IS SECURED TO THE AWNING FRAME WITH BUNGEE CORDS OR ANY OTHER TIE DOWNS, FAILURE TO FOLLOW THESE INSTRUCTIONS WHEN REMOVING THE BUNGEE CORDS FROM THE COVER COULD RESULT IN PERSONAL INJURY.

1. To make sure that the Awning is **completely** closed under the Protective Cover, inspect the following conditions from the side of the Awning:

WARNING: DO NOT PLACE THE LADDER OR STAND IN FRONT OF THE AWNING. DOING SO COULD RESULT IN PERSONAL INJURY.

- a. Check to make sure that the Fabric between the Front Bar and the Roller Bar is tight. See **Figure 30**.
- b. If the Fabric is loose or sagging (see **Figure 31**), push the CLOSE button on your Remote Transmitter or use the manual hand Crank Wand to fully close the Awning and wrap the Fabric tightly around the Roller Bar.
- c. Check that the Fabric is now tight between the Front Bar and Roller Bar. See **Figure 30**.

2. Position yourself under the Awning. Remove the Bungee Cords one at a time.

3. Test the operation of your Awning using the OPEN and CLOSE buttons on the Remote Transmitter.

