

**UNITED STATES DISTRICT COURT  
IN AND FOR THE MIDDLE DISTRICT OF TENNESSEE**

BANKERS STANDARD INSURANCE	)	Civil Action No.:
COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
MTD (USA) CORPORATION,	)	
ZHEJIANG DINGBO PLUMBING	)	
MANUFACTURING CO., LTD., and	)	
INTERLINE BRANDS, INC.,	)	
	)	
Defendants.	)	

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**COMPLAINT FOR DAMAGES**

Plaintiff, Bankers Standard Insurance Company, by and through undersigned counsel, hereby files this Complaint against defendants MTD (USA) Corporation, Zhejiang Dingbo Plumbing Manufacturing Co., Ltd., and Interline Brands, Inc., and allege the following:

**PARTIES**

1. Plaintiff, Bankers Standard Insurance Company, is and has been at all material times a corporation organized and existing under the laws of the State of Pennsylvania, with a principal place of business located at 436 Walnut Street, Philadelphia, PA 19106.
2. Defendant MTD (USA) Corporation is and has been at all material times a corporation organized and existing under the laws of the State of New Jersey, 75-3 Reservation Avenue, River Edge, New Jersey 07661.
3. Defendant Zhejiang Dingbo Plumbing Manufacturing Co., Ltd, is and has been at all material time an entity organized and existing under the laws of the People’s Republic of China, domiciled at No.388, North of Shupu Road, Light Industrial Zone, Lucheng, Wenzhou.

Zhejiang, P.R. China, but which also maintains an address of No. 1 Longshen Industrial Zone Shifu Road Wenzhou City, P.R. China for purposes of service through The Hague Convention.

4. Defendant Interline Brands, Inc. is and has been at all material times a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business listed on the websites for the Tennessee Secretary of State and Florida Secretary of State as 701 San Marco Blvd., Jacksonville, Florida 32207, the registered agent for which in Tennessee is National Registered Agents, Inc. 800 S. Gay Street, Knoxville, TN 37929-9710. Its registered agent in Florida is NRAI Services, Inc., 515 E. Park Avenue, Tallahassee, Florida 32301. Its president is Michael L. Grebe, 701 San Marco Blvd., Jacksonville, Florida 32207. Note that in its March 1, 2011 Form 10-K, it says it is a Delaware corporation, but the Tennessee and Florida corporations websites list the state of incorporation as New Jersey. Note that the company's website at [www.interlinebrands.com](http://www.interlinebrands.com) lists the company's headquarters as of September 5, 2013 as 801 West Bay Street, Jacksonville, FL 32204.

#### VENUE

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2), in that the events or omissions giving rise to this action occurred at 1318 Chickering Road, Nashville, TN 37215, and a substantial part of the property that is the subject of the action has at all material times been situated at the same location.

#### JURISDICTION

6. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332, in that there is complete diversity of citizenship between the parties, and plaintiff's damages are in excess of \$150,000.00.

7. This Court has personal jurisdiction over defendants pursuant to Tennessee's "long arm" statute, Tenn. Code Ann. § §20-2-214 through 219, and in particular §20-2-214(a)(6), subjecting defendants outside Tennessee to lawsuits filed here on "any basis not inconsistent with the constitution of this state or of the United States."

8. This Court has personal jurisdiction over defendants pursuant to Tennessee's other "long arm" statute, Tenn. Code Ann. § §20-2-221 through 225, and in particular §20-2-223(a)(4), subjecting defendants outside Tennessee to lawsuits filed here where defendants have caused "tortious injury in this state by an act or omission outside this state of the person who regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state."

9. The damages alleged occurred in the State of Tennessee as a result of acts or omissions that these Defendants committed outside this state that caused injury to property within this state.

10. These Defendants do business in this state by selling their products to businesses and persons located in this state;

11. Subjecting these Defendants to the jurisdiction of this Court does not offend traditional notions of fair play and substantial justice in that these Defendants purposefully availed themselves of the laws of the State of Tennessee by:

- (a) designing the product that is the subject of this action for the Tennessee market;
- (b) advertising in and/or to the Tennessee market;
- (c) establishing channels for providing regular advice to users or consumers of this product in the State of Tennessee;
- (d) marketing this and other products through a distributor who has agreed to serve as a sales agent, retailer, or dealership in the State of Tennessee;

- (e) shipping products to persons in the State of Tennessee for use by contractors, consumers and homeowners; and/or
- (f) otherwise engaging in continuous and systematic contacts with the State of Tennessee as may be further developed through discovery.

### GENERAL ALLEGATIONS

12. This case involves a water leak of August 17, 2012 (hereinafter “the subject incident”) from a failed plastic coupling nut that was part of a flexible toilet supply line bearing the name brand name DuraPro™ and part no. MSG No. 231274 (hereinafter “the subject coupling nut”).

13. The subject coupling nut served a toilet in the bathroom of the second floor of a two-story home located at 1318 Chickering Road, Nashville, TN 37215 (hereinafter “the home”).

14. The home was built in 1987.

15. At the time of the incident, the home was owned by Steven Mason and Linda Mason (hereinafter “the Masons”).

16. Approximately two or three years prior to the subject incident, the Masons had certain connections and components to the toilets in their home replaced by a local plumbing contractor, Clifton R. Myers of Myers Plumbing, Inc., 2711 Foster Ave, Nashville, TN 37210, phone: 615-866-1963, website: [www.myersnashville.com](http://www.myersnashville.com), along with other flex pipes for other toilets in the subject home.

17. In the process of replacing the components to the fixture, Myers installed the flexible toilet supply line that contained the coupling nut.

18. When the subject coupling nut failed and leaked, the leak caused release of significant quantities of water within the subject home on both floors thereof.

19. The leakage of water damaged the homeowners’ real and personal property.

20. After the subject incident, the defendants were notified of the incident and given an opportunity to inspect the home, the toilet, and the subject coupling nut.
21. Upon investigation, the water supply line was found to be 16 inches long with the subject coupling nut on one end and a ballcock nut on the other end.
22. The subject coupling nut fractured along the base of the nut.
23. The fracture passed through the wall of the nut, near the transition between the threaded portion and the base portion.
24. A radius of .05 inch served to transition the threaded portion into the base portion.
25. Laboratory examination of the subject coupling nut showed the failure progressing around the fracture and numerous voids in the material of the nut.
26. Microscopic examination showed that the voids were, in some places, 0.060 inches in length.
27. The fracture surface on the subject coupling nut exhibited a crystal-like structure in these areas.
28. This crystal-like condition shows that improper material molding took place.
29. The outside diameter of the fracture displayed an area with a shiny appearance.
30. This shiny appearance shows a cold joint where the material did not fuse properly.
31. The fracture originated at this discontinuity and progressed across the plastic nut.

32. Injection molding plastic requires liquid material to fill the mold and cool in such a way so as to leave no voids or create areas where fusion does not take place.

33. Preventing voids from forming in an injection molded part is both a function of part design and the mold processing activity.

34. The fracture to the subject coupling nut was the result of stress concentrations created by voids and lack of fusion in the molded plastic nut.

35. The voids and lack of fusion were conditions that were present at the time of manufacture and are manufacturing defects.

36. The cause of the fracture was not the water pressure at the subject home.

37. Measurements taken at the subject home showed a water pressure of 82 pounds per square inch (psi), well within the reasonably anticipated conditions for use of the subject coupling nut.

38. As a result of the subject incident, the homeowners made a property insurance claim with plaintiff under the terms of a policy that was in effect at the time of the loss between Plaintiff and the homeowners.

39. Plaintiff paid on this claim for the damages to the home and its contents and the loss of use of the home and its contents in the amount of \$1,236,426.67, and waived the insured's \$1,000 deductible.

40. Having paid the homeowners for the above damages pursuant to the policy of insurance and having fully discharged its obligations under the policy and the insured having no

uninsured losses, plaintiff is fully subrogated to the homeowners' rights to bring legal action against those responsible for the damages.

41. Having paid on this claim under a policy of insurance, plaintiff proceeds with this action on the basis of the doctrine of conventional subrogation and/or equitable subrogation.

**COUNT I**  
**NEGLIGENCE AGAINST MTD (USA) CORPORATION**

42. Plaintiff adopts and incorporates by reference its previous allegations as though fully set forth herein.

43. Defendant, MTD (USA) Corporation designed, manufactured, sold and/or distributed the subject coupling nut.

44. Defendant, as the manufacturer and/or distributor and/or seller of the subject coupling nut (also referred to herein as "the product" or "the subject product"), had a duty to assure that it was designed and manufactured in such a way that it would not contain a latent defect that would cause it to crack and fail and result in significant water loss in the course of the ordinary use of the product.

45. Defendant, as the manufacturer and/or distributor and/or seller of the subject product, had a duty to warn persons who might reasonably use the product about latent dangerous defects concerning that product.

46. It was foreseeable to Defendant that if Defendant sold and delivered the product with a latent defect, and if Defendant failed to warn of such defect, users such as Plaintiff's insureds could suffer personal or property damage.

47. Plaintiff's insureds were within the class of persons to which Defendant owed a duty of care.

48. The water loss event was the result of a malfunction of or defect in the product.

49. The product contained this defective condition when it left Defendant's possession and control.
50. Defendant breached its duty of care to Plaintiffs.
51. The acts and omissions that constituted breaches of the duty of care to Plaintiffs include the following:
- a. Defendant failed to assure that the manufacture of the product was done pursuant to a safer, practical, feasible, more reliable or otherwise reasonable alternative process or formulation for the product that could then have been reasonably implemented and would have prevented or substantially reduced the risk of harm without substantially impairing the usefulness, practicality, or desirability of the product.
  - b. Defendant did not maintain proper, reasonable and customary quality control or properly inspect the product.
  - c. Defendant did not properly warn of latent defects or hazards in the product.
  - d. Defendant failed to undertake protective measures in the manufacturing process sufficient to render the product safe and free of defects that could lead to water leakage and resultant property damage of the type experienced here.
  - e. Defendant did not exercise that level of care that would be reasonable for a manufacturer of this type of product to exercise under the circumstances.
52. Plaintiff's insureds used the product for its intended purpose and/or for a purpose that was reasonably foreseeable by Defendant.
53. This count does not seek any damages to the product itself.
54. This count seeks damages to property other than that product.
55. The property damages that this count seeks includes the damages to the structure, damages to the contents in the house, cleaning costs, moving costs, and additional living expenses incurred as a result of not having use of the house.



56. This product was within the home but was not an integral part of the home's physical structure.

57. As a direct and proximate result of Defendant's negligence, plaintiff suffered the damages previously described.

WHEREFORE, Plaintiff respectfully requests the entry of a judgment in its favor in an amount in excess of \$150,000, plus interest and costs as allowed by law.

**COUNT II**  
**STRICT LIABILITY AGAINST MTD (USA) CORPORATION**

58. Plaintiff hereby incorporates and reavers by reference the allegations preceding Count I as if fully stated herein.

59. Defendant MTD (USA) Corporation was the manufacturer and/or distributor and/or seller of the subject coupling nut (also referred to herein as "the product" or "the subject product").

60. Defendant placed the product into the stream of commerce.

61. This product is the type of product that Defendant is in the business of manufacturing and/or selling and/or distributing.

62. Defendant expected that the product would reach the user or consumer without substantial change in the condition in which it was sold.

63. The product reached the user or consumer without substantial change in the condition in which it was sold.

64. Plaintiff's insureds were users and/or consumers of the product.

65. Plaintiff's insureds used the subject product for the purpose and in the manner for which it was designed and intended.

66. The subject product was defective and unreasonably dangerous in that it had a high risk of causing catastrophic flooding if it should fail in the ordinary course of its use.

67. The product was in the defective condition at the time that it left the possession or control of the Defendant.

68. Defendant failed to adopt a safer, practical, feasible, more reliable or otherwise reasonable alternative manufacturing process or formulation for the product that could then have been reasonably implemented and would have prevented or substantially reduced the risk of harm without substantially impairing the usefulness, practicality, or desirability of the product.

69. Defendant failed to undertake protective measures in the product sufficient to render the product safe and free of defects that could lead to home flooding (and which did lead to the flooding of the subject home).

70. The product was expected to and did reach the owner/purchaser of the product alleged herein without substantial change in its condition.

71. The product was used for its intended purpose and/or for a purpose that was reasonably foreseeable by Defendant.

72. This count does not seek any damages to the product itself.

73. This count seeks damages to property other than that product.

74. The property damages that this count seeks includes the damages to the structure, damages to the contents in the house, cleaning costs, moving costs, and additional living expenses incurred as a result of not having use of the house.

75. This product was within the home but was not an integral part of the home's physical structure.

76. As a direct and proximate result of the unreasonable dangerous defective condition of the product and its failure, plaintiff's insured incurred the damages previously described.

WHEREFORE, Plaintiff respectfully requests the entry of a judgment in its favor in an amount in excess of \$150,000, plus interest and costs as allowed by law.

**COUNT III**  
**BREACH OF EXPRESS WARRANTY AGAINST MTD (USA) CORPORATION**

77. Plaintiff hereby incorporates and reavers by reference the allegations preceding Count I as if fully stated herein.

78. The subject coupling nut (also referred to herein as "the product" or "the subject product") was a product and a "good" within the meaning of the Tennessee version of the Uniform Commercial Code ("UCC").

79. In the course of the purchase of the subject product, Defendant MTD (USA) Corporation in addition to the warranties created by law issued an express warranty which warranted that the product would be free of defects in design and/or workmanship and/or would be merchantable and/or fit for the particular purpose for which it was sold.

80. This warranty extend to the homeowners.

81. The homeowners reasonably relied upon such warranty.

82. The contacts between the homeowners and defendant were sufficient for defendant to be deemed a "seller" within the meaning of Tennessee's version of the UCC.

83. The subject incident was the result of a malfunction from a defect in the subject product in the course of its ordinary use.

84. The subject product was defective and unreasonably dangerous in that it had the defects described above that gave it a propensity to fracture and/or otherwise fail, allowing water to leak from it in the ordinary course of its use.

85. The subject product contained the defective condition when it left defendant's possession and control.

86. Plaintiff's used the subject product for its intended purpose and/or for a purpose that was reasonably foreseeable by defendant.

87. Defendant breached the above warranties by providing the product with the described defect.

88. Plaintiff provided proper notice to defendant of the defective condition and the damages caused thereby.

89. The Defendant has failed and refused to provide a reasonable and timely remedy to the homeowners.

90. As a direct and proximate result of Defendant's breach of its express warranty, Plaintiff has suffered the previously described damages.

**COUNT IV**  
**BREACH OF IMPLIED WARRANTY AGAINST MTD (USA) CORPORATION**

91. Plaintiff hereby incorporates and reavers by reference the allegations preceding Count I as if fully stated herein.

92. The subject coupling nut (also referred to herein as "the product" or "the subject product") was a product and a "good" within the meaning of the Tennessee version of the Uniform Commercial Code ("UCC").

93. In the course of the purchase of the subject product, Defendant MTD (USA) Corporation either directly or through an authorized distributor or vendor extended to the

homeowners' an implied warranty warranting that the product would be free of defects in design and/or workmanship and/or would be merchantable and/or fit for the particular purpose for which it was sold, and Plaintiff's insured reasonably relied upon such warranty.

94. This implied warranty extend to the homeowners.

95. The homeowners reasonably relied upon such implied warranty.

96. The contacts between the homeowners and defendant were sufficient for defendant to be deemed a "seller" within the meaning of Tennessee's version of the UCC.

97. The subject incident was the result of a malfunction from a defect in the subject product in the course of its ordinary use.

98. The subject product was defective and unreasonably dangerous in that it had the defects described above that gave it a tendency to fracture and/or otherwise fail, allowing water to leak from it in the ordinary course of its use.

99. The subject product contained the defective condition when it left defendant's possession and control.

100. Plaintiff's insured used the subject product for its intended purpose and/or for a purpose that was reasonably foreseeable by defendant.

101. Defendant breached the above warranties by providing the product with the described defect.

102. Plaintiff provided proper notice to defendant of the defective condition and the damages caused thereby.

103. The Defendant has failed and refused to provide a reasonable and timely remedy to the homeowners.

104. As a direct and proximate result of Defendant's breach of its implied warranty, plaintiff has suffered the previously described damages.

105. WHEREFORE, Plaintiff respectfully requests the entry of a judgment in its favor in an amount in excess of \$150,000, plus interest and costs as allowed by law.

**COUNT V**  
**NEGLIGENCE AGAINST ZHEJIANG DINGBO PLUMBING**  
**MANUFACTURING CO., LTD**

106. Plaintiff adopts and incorporates by reference its previous allegations as though fully set forth herein.

107. Defendant, Zhejiang Dingbo Plumbing Manufacturing Co., Ltd. designed, manufactured, sold and/or distributed the subject coupling nut.

108. Defendant, as the manufacturer and/or distributor and/or seller of the subject coupling nut (also referred to herein as "the product" or "the subject product"), had a duty to assure that it was designed and manufactured in such a way that it would not contain a latent defect that would cause it to crack and fail and result in significant water loss in the course of the ordinary use of the product.

109. Defendant, as the manufacturer and/or distributor and/or seller of the subject product, had a duty to warn persons who might reasonably use the product about latent dangerous defects concerning that product.

110. It was foreseeable to Defendant that if Defendant sold and delivered the product with a latent defect, and if Defendant failed to warn of such defect, users such as Plaintiff's insureds could suffer personal or property damage.

111. Plaintiff's insureds were within the class of persons to which Defendant owed a duty of care.

112. The water loss event was the result of a malfunction of or defect in the product.

113. The product contained this defective condition when it left Defendant's possession and control.

114. Defendant breached its duty of care to Plaintiffs.

115. The acts and omissions that constituted breaches of the duty of care to Plaintiffs include the following:

a. Defendant failed to assure that the manufacture of the product was done pursuant to a safer, practical, feasible, more reliable or otherwise reasonable alternative process or formulation for the product that could then have been reasonably implemented and would have prevented or substantially reduced the risk of harm without substantially impairing the usefulness, practicality, or desirability of the product.

b. Defendant did not maintain proper, reasonable and customary quality control or properly inspect the product.

c. Defendant did not properly warn of latent defects or hazards in the product.

d. Defendant failed to undertake protective measures in the manufacturing process sufficient to render the product safe and free of defects that could lead to water leakage and resultant property damage of the type experienced here.

e. Defendant did not exercise that level of care that would be reasonable for a manufacturer of this type of product to exercise under the circumstances.

116. Plaintiff's insureds used the product for its intended purpose and/or for a purpose that was reasonably foreseeable by Defendant.

117. This count does not seek any damages to the product itself.

118. This count seeks damages to property other than that product.

119. The property damages that this count seeks includes the damages to the structure, damages to the contents in the house, cleaning costs, moving costs, and additional living expenses incurred as a result of not having use of the house.

120. This product was within the home but was not an integral part of the home's physical structure.

121. As a direct and proximate result of Defendant's negligence, plaintiff suffered the damages previously described.

WHEREFORE, Plaintiff respectfully requests the entry of a judgment in its favor in an amount in excess of \$150,000, plus interest and costs as allowed by law.

**COUNT VI**  
**STRICT LIABILITY AGAINST**  
**ZHEJIANG DINGBO PLUMBING MANUFACTURING CO., LTD**

122. Plaintiff hereby incorporates and reavers by reference the allegations preceding Count I as if fully stated herein.

123. Defendant Zhejiang Dingbo Plumbing Manufacturing Co., Ltd. was the manufacturer and/or distributor and/or seller of the subject coupling nut (also referred to herein as "the product" or "the subject product").

124. Defendant placed the product into the stream of commerce.

125. This product is the type of product that Defendant is in the business of manufacturing and/or selling and/or distributing.

126. Defendant expected that the product would reach the user or consumer without substantial change in the condition in which it was sold.

127. The product reached the user or consumer without substantial change in the condition in which it was sold.



128. Plaintiff's insureds were users and/or consumers of the product.

129. Plaintiff's insureds used the subject product for the purpose and in the manner for which it was designed and intended.

130. The subject product was defective and unreasonably dangerous in that it had a tendency to cause catastrophic flooding if it should fail in the ordinary course of its use.

131. The product was in the defective condition at the time that it left the possession or control of the Defendant.

132. Defendant failed to adopt a safer, practical, feasible, more reliable or otherwise reasonable alternative manufacturing process or formulation for the product that could then have been reasonably implemented and would have prevented or substantially reduced the risk of harm without substantially impairing the usefulness, practicality, or desirability of the product.

133. Defendant failed to undertake protective measures in the product sufficient to render the product safe and free of defects that could lead to home flooding (and which did lead to the flooding of the subject home).

134. The product was expected to and did reach the owner of the product alleged herein without substantial change in its condition.

135. The product was used for its intended purpose and/or for a purpose that was reasonably foreseeable by Defendant.

136. This count does not seek any damages to the product itself.

137. This count seeks damages to property other than that product.

138. The property damages that this count seeks includes the damages to the structure, damages to the contents in the house, cleaning costs, moving costs, and additional living expenses incurred as a result of not having use of the house.

139. This product was within the home but was not an integral part of the home's physical structure.

140. As a direct and proximate result of the unreasonable dangerous defective condition of the product and its failure, plaintiff's insured incurred the damages previously described.

WHEREFORE, Plaintiff respectfully requests the entry of a judgment in its favor in an amount in excess of \$150,000, plus interest and costs as allowed by law.

**COUNT VII**  
**BREACH OF EXPRESS WARRANTY AGAINST ZHEJIANG DINGBO PLUMBING**  
**MANUFACTURING CO., LTD**

141. Plaintiff hereby incorporates and reavers by reference the allegations preceding Count I as if fully stated herein.

142. The subject the subject coupling nut (also referred to herein as "the product" or "the subject product") was a product and a "good" within the meaning of the Tennessee version of the Uniform Commercial Code ("UCC").

143. In the course of the purchase of the subject product, Defendant Zhejiang Dingbo Plumbing Manufacturing Co., Ltd. issued an express warranty warranting that the product would be free of defects in design and/or workmanship and/or would be merchantable and/or fit for the particular purpose for which it was sold.

144. This warranty extend to the homeowners.

145. The homeowners reasonably relied upon such warranty.

146. The contacts between the homeowners and defendant were sufficient for defendant to be deemed a "seller" within the meaning of Tennessee's version of the UCC.

147. The subject incident was the result of a malfunction from a defect in the subject product in the course of its ordinary use.

148. The subject product was defective and unreasonably dangerous in that it had the defects described above that gave it a tendency to fracture and/or otherwise fail, allowing water to leak from it in the ordinary course of its use.

149. The subject product contained the defective condition when it left defendant's possession and control.

150. Plaintiff's used the subject product for its intended purpose and/or for a purpose that was reasonably foreseeable by defendant.

151. Defendant breached the above warranties by providing the product with the described defect.

152. Plaintiff provided proper notice to defendant of the defective condition and the damages caused thereby.

153. The Defendant has failed and refused to provide a reasonable and timely remedy to the homeowners.

154. As a direct and proximate result of Defendant's breach of its express warranty, Plaintiff has suffered the previously described damages.

**COUNT VIII**  
**BREACH OF IMPLIED WARRANTY AGAINST ZHEJIANG DINGBO PLUMBING**  
**MANUFACTURING CO., LTD**

155. Plaintiff hereby incorporates and reavers by reference the allegations preceding Count I as if fully stated herein.

156. The subject the subject coupling nut (also referred to herein as “the product” or “the subject product”) was a product and a “good” within the meaning of the Tennessee version of the Uniform Commercial Code (“UCC”).

157. In the course of the purchase of the subject product, Defendant Zhejiang Dingbo Plumbing Manufacturing Co., Ltd. either directly or through an authorized distributor or vendor extended to the homeowners’ an implied warranty warranting that the product would be free of defects in design and/or workmanship and/or would be merchantable and/or fit for the particular purpose for which it was sold, and Plaintiff’s insured reasonably relied upon such warranty.

158. This implied warranty extend to the homeowners.

159. The homeowners reasonably relied upon such implied warranty.

160. The contacts between the homeowners and defendant were sufficient for defendant to be deemed a “seller” within the meaning of Tennessee’s version of the UCC.

161. The subject incident was the result of a malfunction from a defect in the subject product in the course of its ordinary use.

162. The subject product was defective and unreasonably dangerous in that it had the defects described above that gave it a tendency to fracture and/or otherwise fail, allowing water to leak from it in the ordinary course of its use.

163. The subject product contained the defective condition when it left defendant’s possession and control.

164. Plaintiff’s insured used the subject product for its intended purpose and/or for a purpose that was reasonably foreseeable by defendant.

165. Defendant breached the above warranties by providing the product with the described defect.

166. Plaintiff provided proper notice to defendant of the defective condition and the damages caused thereby.

167. The Defendant has failed and refused to provide a reasonable and timely remedy to the homeowners.

168. As a direct and proximate result of Defendant's breach of its implied warranty, plaintiff has suffered the previously described damages.

WHEREFORE, Plaintiff respectfully requests the entry of a judgment in its favor in an amount in excess of \$150,000, plus interest and costs as allowed by law.

**COUNT IX**  
**NEGLIGENCE AGAINST INTERLINE BRANDS, INC.**

169. Plaintiff adopts and incorporates by reference its previous allegations as though fully set forth herein.

170. Defendant, Interline Brands, Inc. designed, manufactured, sold and/or distributed the subject coupling nut.

171. Defendant, as the manufacturer and/or distributor and/or seller of the subject coupling nut (also referred to herein as "the product" or "the subject product"), had a duty to assure that it was designed and manufactured in such a way that it would not contain a latent defect that would cause it to crack and fail and result in significant water loss in the course of the ordinary use of the product.

172. Defendant, as the manufacturer and/or distributor and/or seller of the subject product, had a duty to warn persons who might reasonably use the product about latent dangerous defects concerning that product.

173. It was foreseeable to Defendant that if Defendant sold and delivered the product with a latent defect, and if Defendant failed to warn of such defect, users such as Plaintiff's insureds could suffer personal or property damage.

174. Plaintiff's insureds were within the class of persons to which Defendant owed a duty of care.

175. The water loss event was the result of a malfunction of or defect in the product.

176. The product contained this defective condition when it left Defendant's possession and control.

177. Defendant breached its duty of care to Plaintiffs.

178. The acts and omissions that constituted breaches of the duty of care to Plaintiffs include the following:

- a. Defendant failed to assure that the manufacture of the product was done pursuant to a safer, practical, feasible, more reliable or otherwise reasonable alternative process or formulation for the product that could then have been reasonably implemented and would have prevented or substantially reduced the risk of harm without substantially impairing the usefulness, practicality, or desirability of the product.
- b. Defendant did not maintain proper, reasonable and customary quality control or properly inspect the product.
- c. Defendant did not properly warn of latent defects or hazards in the product.
- d. Defendant failed to undertake protective measures in the manufacturing process sufficient to render the product safe and free of defects that could lead to water leakage and resultant property damage of the type experienced here.
- e. Defendant did not exercise that level of care that would be reasonable for a manufacturer of this type of product to exercise under the circumstances.

179. Plaintiff's insureds used the product for its intended purpose and/or for a purpose that was reasonably foreseeable by Defendant.

180. This count does not seek any damages to the product itself.

181. This count seeks damages to property other than that product.

182. The property damages that this count seeks includes the damages to the structure, damages to the contents in the house, cleaning costs, moving costs, and additional living expenses incurred as a result of not having use of the house.

183. This product was within the home but was not an integral part of the home's physical structure.

184. As a direct and proximate result of Defendant's negligence, plaintiff suffered the damages previously described.

WHEREFORE, Plaintiff respectfully requests the entry of a judgment in its favor in an amount in excess of \$150,000, plus interest and costs as allowed by law.

**COUNT X**  
**STRICT LIABILITY AGAINST INTERLINE BRANDS, INC.**

185. Plaintiff hereby incorporates and reavers by reference the allegations preceding Count I as if fully stated herein.

186. Defendant Interline Brands, Inc. was the manufacturer and/or distributor and/or seller of the subject coupling nut (also referred to herein as "the product" or "the subject product").

187. Defendant placed the product into the stream of commerce.

188. This product is the type of product that Defendant is in the business of manufacturing and/or selling and/or distributing.

189. Defendant expected that the product would reach the user or consumer without substantial change in the condition in which it was sold.

190. The product reached the user or consumer without substantial change in the condition in which it was sold.

191. Plaintiff's insureds were users and/or consumers of the product.

192. Plaintiff's insureds used the subject product for the purpose and in the manner for which it was designed and intended.

193. The subject product was defective and unreasonably dangerous in that it had a tendency to cause catastrophic flooding if it should fail in the ordinary course of its use.

194. The product was in the defective condition at the time that it left the possession or control of the Defendant.

195. Defendant failed to adopt a safer, practical, feasible, more reliable or otherwise reasonable alternative manufacturing process or formulation for the product that could then have been reasonably implemented and would have prevented or substantially reduced the risk of harm without substantially impairing the usefulness, practicality, or desirability of the product.

196. Defendant failed to undertake protective measures in the product sufficient to render the product safe and free of defects that could lead to home flooding (and which did lead to the flooding of the subject home).

197. The product was expected to and did reach the owner of the product alleged herein without substantial change in its condition.

198. The product was used for its intended purpose and/or for a purpose that was reasonably foreseeable by Defendant.

199. This count does not seek any damages to the product itself.



200. This count seeks damages to property other than that product.

201. The property damages that this count seeks includes the damages to the structure, damages to the contents in the house, cleaning costs, moving costs, and additional living expenses incurred as a result of not having use of the house.

202. This product was within the home but was not an integral part of the home's physical structure.

203. As a direct and proximate result of the unreasonable dangerous defective condition of the product and its failure, plaintiff's insured incurred the damages previously described.

WHEREFORE, Plaintiff respectfully requests the entry of a judgment in its favor in an amount in excess of \$150,000, plus interest and costs as allowed by law.

**COUNT XI**  
**BREACH OF EXPRESS WARRANTY AGAINST INTERLINE BRANDS, INC.**

204. Plaintiff hereby incorporates and reavers by reference the allegations preceding Count I as if fully stated herein.

205. The subject the subject coupling nut (also referred to herein as "the product" or "the subject product") was a product and a "good" within the meaning of the Tennessee version of the Uniform Commercial Code ("UCC").

206. In the course of the purchase of the subject product, Defendant Interline Brands, Inc. issued an express warranty warranting that the product would be free of defects in design and/or workmanship and/or would be merchantable and/or fit for the particular purpose for which it was sold.

207. This warranty extend to the homeowners.

208. The homeowners reasonably relied upon such warranty.

209. The contacts between the homeowners and defendant were sufficient for defendant to be deemed a “seller” within the meaning of Tennessee’s version of the UCC.

210. The subject incident was the result of a malfunction from a defect in the subject product in the course of its ordinary use.

211. The subject product was defective and unreasonably dangerous in that it had the defects described above that gave it a tendency to fracture and/or otherwise fail, allowing water to leak from it in the ordinary course of its use.

212. The subject product contained the defective condition when it left defendant’s possession and control.

213. Plaintiff’s used the subject product for its intended purpose and/or for a purpose that was reasonably foreseeable by defendant.

214. Defendant breached the above warranties by providing the product with the described defect.

215. Plaintiff provided proper notice to defendant of the defective condition and the damages caused thereby.

216. The Defendant has failed and refused to provide a reasonable and timely remedy to the homeowners.

217. As a direct and proximate result of Defendant’s breach of its express warranty, Plaintiff has suffered the previously described damages.

**COUNT XII**  
**BREACH OF IMPLIED WARRANTY AGAINST INTERLINE BRANDS, INC.**

218. Plaintiff hereby incorporates and reavers by reference the allegations preceding Count I as if fully stated herein.

219. The subject the subject coupling nut (also referred to herein as “the product” or “the subject product”) was a product and a “good” within the meaning of the Tennessee version of the Uniform Commercial Code (“UCC”).

220. In the course of the purchase of the subject product, Defendant Interline Brands, Inc. either directly or through an authorized distributor or vendor extended to the homeowners’ an implied warranty warranting that the product would be free of defects in design and/or workmanship and/or would be merchantable and/or fit for the particular purpose for which it was sold, and Plaintiff’s insured reasonably relied upon such warranty.

221. This implied warranty extend to the homeowners.

222. The homeowners reasonably relied upon such implied warranty.

223. The contacts between the homeowners and defendant were sufficient for defendant to be deemed a “seller” within the meaning of Tennessee’s version of the UCC.

224. The subject incident was the result of a malfunction from a defect in the subject product in the course of its ordinary use.

225. The subject product was defective and unreasonably dangerous in that it had the defects described above that gave it a tendency to fracture and/or otherwise fail, allowing water to leak from it in the ordinary course of its use.

226. The subject product contained the defective condition when it left defendant’s possession and control.

227. Plaintiff’s insured used the subject product for its intended purpose and/or for a purpose that was reasonably foreseeable by defendant.

228. Defendant breached the above warranties by providing the product with the described defect.

229. Plaintiff provided proper notice to defendant of the defective condition and the damages caused thereby.

230. The Defendant has failed and refused to provide a reasonable and timely remedy to the homeowners.

231. As a direct and proximate result of Defendant's breach of its implied warranty, plaintiff has suffered the previously described damages.

WHEREFORE, Plaintiff respectfully requests the entry of a judgment in its favor in an amount in excess of \$150,000, plus interest and costs as allowed by law.


Plaintiff respectfully requests:

- (1) That process issue;
- (2) That Defendant be required to answer in a timely manner;
- (3) That upon the trial of this matter a verdict be entered for Plaintiff and against Defendant;
- (4) That there be entry of a judgment in its favor and against Defendants in an amount greater than \$150,000, the specific total of which shall be presented in discovery and at trial of this cause;
- (5) That they be awarded fees, expenses, interest and costs as allowed by law;
- (6) That Plaintiff be awarded all other and further relief to which it is entitled.

Respectfully submitted this 30<sup>th</sup> day of October, 2013.

By:

/s/

  
John W. Reis

BPR #024818

COZEN O'CONNOR

One Wells Fargo Center, Suite 2100

301 South College Street

Charlotte, NC 28202

Phone: 704-376-3400

(6) That Plaintiff be awarded all other and further relief to which it is entitled.

Respectfully submitted this 30<sup>th</sup> day of October, 2013.

By: 

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*Attorney for Plaintiff*

**CERTIFICATE REGARDING SERVICE**

I HEREBY CERTIFY that upon receiving a filed, stamped copy of the above Complaint with issuance of a Summons, the undersigned shall undertake to effect service of process upon the named defendant within the time allowed under the Federal Rules of Civil Procedure.

Respectfully submitted this 30<sup>th</sup> day of October 2013.

COZEN O'CONNOR

By: John W. Reis  
John W. Reis

