

Liza M. Walsh  
Katelyn O'Reilly  
William T. Walsh, Jr.  
WALSH PIZZI O'REILLY FALANGA LLP  
Three Gateway Center  
100 Mulberry Street, 15th Floor  
Newark, New Jersey 07102  
(973) 757-1110

*Attorneys for Plaintiff*  
*Miller Industries Towing Equipment Inc.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

Miller Industries Towing Equipment Inc.,	)	
	)	
Plaintiff,	)	
	)	Case No.
v.	)	
	)	
NRC Industries,	)	
	)	BENCH TRIAL
Defendant.	)	

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Miller Industries Towing Equipment Inc. ("Miller") for their Complaint against of Defendant NRC Industries ("NRC") alleges as follows:

1. This is a claim for patent infringement, arising under the patent laws of the United States, specifically Title 35 of the United States Code, 35 U.S.C. § 271.

**The Parties**

2. Plaintiff Miller is a Delaware corporation, with its principal place of business located at 8503 Hilltop Dr., Ooltewah, Tennessee 37363.

3. Defendant NRC is a Canadian corporation, with its principal place of business located at 2430 Rue Principale, Saint-Paul-d'Abbotsford (Québec) JO1 1AO, Canada. NRC advertises on its website that it has a U.S.-based network of distributors, consisting of at least 14

“NRC dealers” in various states, including one dealer in New Jersey (*see* Ex. 1, <https://nrc-industries.com/nrc-dealer/>). The NRC dealer in New Jersey is Battelini Wrecker Sales (“Battelini”), located at 351 N. Harding Hwy, Landisville, NJ 08326 (Atlantic Co., NJ) (*see* Ex. 2, Battelini Home webpage stating, “Battelini Wrecker Sales and Service is a leading dealer for NRC Industries ... [w]e are able to handle all of your wrecker and carrier needs.”). In past litigation between the parties, NRC previously acknowledged that it is subject to personal jurisdiction in New Jersey for purposes of this lawsuit (*see* ¶5, *infra*).

### **Jurisdiction and Venue**

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), as this is a civil action for patent infringement arising under 35 U.S.C. § 271.

5. This Court has personal jurisdiction over NRC, as it has been, and continues to be, engaged in patent infringement that is directed at and/or causes damage to Miller, an entity that is residing in, located in, or doing business throughout the U.S., including New Jersey. NRC also regularly conducts business within the District of New Jersey by distributing its infringing products through its dealer Battelini, and advertising through popular, towing industry trade magazines that are disseminated in New Jersey and nationally (*see e.g.* Ex. 3, NRC’s infringing products advertised in American Towman and TowTimes). NRC also regularly markets its infringing products at major towing industry trade shows, including the American Towman Exposition at Atlantic City, NJ (*see* Ex. 13, [https://m.facebook.com/pg/nrc.industries/photos/?tab=album&album\\_id=2677145445697616](https://m.facebook.com/pg/nrc.industries/photos/?tab=album&album_id=2677145445697616), photos of NRC exhibiting the infringing products at the 2019 Atlantic City, NJ (Atlantic Co., NJ) tow show). Finally, in previous litigation between Miller and NRC, where Miller alleged infringement of the at-issue Patent in this case based on the same NRC products (this case was

dismissed for NRC lacking personal jurisdiction in Tennessee, only, *see* Ex. 11, p.11), NRC acknowledged that it would be subject to personal jurisdiction in New Jersey (*see* Ex. 11, *Miller Industries Towing Equipment Inc. v. NRC Industries*, Case No. 1:19-cv-00095-PLR-SKL (E.D. Tenn.), the “Tennessee Case,” Dkt. 50, Memorandum and Order, p.10, stating “NRC’s response signified that it agreed it was subject to jurisdiction in New Jersey”; *see also* Ex. 12 highlighted for emphasis, NRC’s counsel’s 6/4/19 email stating, “[w]ith respect to New Jersey, I confirm that NRC would not contest personal jurisdiction in that state in a lawsuit involving claims of patent infringement directed at the accused product (which is the same product in this case).”).

6. Venue is proper in this District under 28 U.S.C. § 1391(a)-(c), primarily because the District of New Jersey (*see also* ¶5, *supra*), is where a substantial part of the events or omissions giving rise to this claim occurred, or a substantial part of property that is the subject of the action is situated, and NRC resides in this District for venue purposes.

**Miller’s ‘577 Patent and Its Corresponding Extendable and Retractable  
Raptor® Rotating Wrecker Control Product**

7. Founded in 1987, Miller is a publicly-traded, Ooltewah, Tennessee-based tow truck and towing equipment company that manufactures and sells a variety of light to heavy-duty wreckers, car carriers, and rotating wreckers under several brand names, including Century and Vulcan. Miller is considered the largest manufacturer of towing and recovery equipment in the world. One category of recovery vehicles that Miller designs and manufactures are its various models of rotating wreckers, which are large, heavy-duty, boom-utilizing recovery vehicles capable of lifting and clearing heavy roadway obstructions (i.e., an overturned semi-tractor trailer). Rotating wreckers are sophisticated and expensive pieces of machinery, which typically retail to operators for as much or more than one-half million dollars.

8. In the field of rotating wrecker technology, Miller owns<sup>1</sup> U.S. Patent No. 9,440,577 B2 (*see* Ex. 4, the “‘577 Patent”; Title: “Vehicle Wrecker With Improved Controls”; Filing Date: April 7, 2014), which is an unexpired utility patent disclosing and claiming the use of extendable and retractable rotating wrecker controls that enhance ease of wrecker operation and operator safety. At the time of invention and filing, all inventors of the ‘577 Patent (McConnell *et al.*) were Miller employees. The ‘577 Patent is important intellectual property for Miller, and all of its rotating wrecker models have the patented extendable and retractable rotating wrecker controls (branded as the “Raptor® Control Package”) as either standard or optional equipment (*See* Ex. 5, collectively, the “Infringed Rotating Wreckers”).<sup>2</sup> NRC and the public are on notice that this technology is patented, as Miller’s publicly accessible webpages for the Infringed Rotating Wreckers are marked with the ‘577 Patent (*see id.* highlighted for emphasis).

**NRC’s Infringement of the ‘577 Patent Through Its Manufacturing, Advertising and Sale of the Infringed Rotating Wreckers Throughout the U.S., Including New Jersey**

9. In about the Fall of 2018, Miller observed infringement of the ‘577 Patent, primarily at towing industry trade shows, by NRC -- a recent competitor to Miller in the relatively exclusive U.S.-based tow truck and towing equipment manufacturing industry<sup>3</sup> (*see* Ex. 6, Miller’s 3/30/19 Settlement Letter to NRC (attachments omitted)). NRC manufactures and sells its own rotating wrecker models: the NRC CSR 50, 65, and 85 (*see* Ex. 7, the “Infringed Rotating Wreckers”),

---

<sup>1</sup> As the owner of the ‘577 Patent, Miller has standing to sue for past, current and future infringement.

<sup>2</sup> Miller’s models of Infringed Rotating Wreckers that have the patented Raptor® Control Package as standard equipment are the Century M100, Century 1150R, and the Vulcan 950R (*see* Ex. 5). Miller’s models of Infringed Rotating Wreckers that have the patented Raptor® Control Package as optional equipment are the Century 1075S, Vulcan 975, Century 1135, Century 1135RXP, Century 1140, Century 1140RXP, Century 1150S, Century 1150RXP, Vulcan 950, Vulcan 950RXP, Vulcan 935, Vulcan 935RXP, Vulcan 940, and the Vulcan 940RXP (*see id.*).

<sup>3</sup> Hagerstown, Maryland-based Jerr-Dan is the only other tow truck company that manufactures and sells rotating wreckers in the U.S. (*see* <https://www.jerrdan.com/equipment/rotator>).

which infringe Claims 1-3, 6, 11, 16, and 20-21 of the ‘577 Patent (*see* ¶¶11-18, *infra*). NRC’s Infringing Rotating Wreckers utilize extendable and retractable rotating wrecker controls as claimed in Miller’s ‘577 patent (i.e., NRC’s infringing version of Miller’s Raptor® Control Package, the “Infringing Controls”; *see* Ex. 7). NRC’s Infringing Controls are currently standard on the Infringing Rotating Wreckers (*see id.*, offering the “Retractable main control station with fully proportional paddle style controls (the Infringing Controls)” as “Standard equipment” for NRC’s Infringing Rotating Wreckers).<sup>4</sup>

10. NRC’s extensive, U.S.-based advertising of the Infringing Rotating Wreckers and the Infringing Controls, which involves regular advertisement of these products in the two major towing industry publications, American Towman and TowTimes (*see e.g.*, Ex. 3), and participation in large, influential towing trade shows -- one of which is held in Atlantic City, New Jersey (*see* Ex. 13). NRC’s targeting of U.S. rotating wrecker consumers has paid dividends in the state of New Jersey, as NRC has sold at least two Infringing Rotating Wreckers with the Infringing Controls in this state (*see* Ex. 14, NRC manager’s 5/17/19 Dec. at ¶8 confirming at least one sale of an Infringing Rotating Wrecker with the Infringing Controls in NJ, and a May 2020 LinkedIn post from Battelini confirming another such sale to DeFalco’s Instant Towing (Chatham, NJ)). Both sales presumably originated from Atlantic Co., NJ, where Battelini is located (*see* Ex. 2) – NRC’s only dealer in New Jersey (*see* Ex. 1). Given that the Infringing Rotating Wreckers typically cost about one-half million dollars or more, Miller estimates that NRC has done at least \$1 million worth of sales in New Jersey, based on these two sales alone.

11. NRC’s Infringing Rotating Wreckers with the Infringing Controls, infringe independent Claim 1 of the ‘577 Patent, as these products are wrecker-type recovery vehicles, used

---

<sup>4</sup> NRC’s other wrecker models, which may also infringe the ‘577 Patent, if they are equipped with the Infringing Controls, are the NRC CS 20, 25, 30, 40, 50 and the NRC Roadrunner. *See* Ex. 8.

for recovering other disabled vehicles, and have the following features (*see* Ex. 10, Miller's Accused Products Claim Charts, Claim 1; *see also* Ex. 4, '577 Patent, 8:29-62):

a) a vehicle frame extending along a longitudinal axis, the vehicle frame supporting a vehicle body that carries an extensible and retractable boom;

b) manually-manipulable wrecker controls located on and supported by a control panel stored within an interior compartment of the wrecker, which is supported by the vehicle body;

c) wrecker controls designed to manipulate movement of wrecker components useful in vehicle recovery (the control panel with the wrecker controls has a base end and a distal end opposite the base end);

d) the control panel can be moved from a first, storage position within the interior compartment of the vehicle body, in which the control panel in the first position closes off the interior compartment from an operator of the wrecker controls (given that the control panel is attached to, and part of, the compartment door, the control panel in this first storage position closes off the interior compartment from an operator of the wrecker controls) -- to a second, operable position displaced from and outside the compartment and remote from the vehicle exterior, in a direction perpendicular to the longitudinal axis;

e) the control panel in the second position provides an open interior compartment in which the wrecker controls are located in a position where they may be manipulated by the operator (when in the second position, the control panel is downwardly-angled relative to the ground such that the distal end is located remote from the vehicle body and below a horizontal axis parallel to ground and intersecting the base end); and

f) the control panel is supported by the vehicle body while in the second position, and the displacement of the control panel to the second position is a strategic location of the wrecker controls, providing an operator with an ergonomically-enhanced work surface.

12. NRC's Infringing Rotating Wreckers with the Infringing Controls, also infringe dependent Claim 2 of the '577 Patent, as the distance that the wrecker controls are located from the side surface of the vehicle exterior when the control panel is moved to the extended position is about 1-2 feet, such that the operator has substantially expanded sight-lines in the extended position, as opposed to sightlines provided when the operator is using the control panel in the non-extended position (*see* Ex. 10, Miller's Accused Products Claim Charts, Claim 2; *see also* Ex. 4, '577 Patent, 8:63 – 9:3).

13. NRC's Infringing Rotating Wreckers with the Infringing Controls, also infringe dependent Claim 3 of the '577 Patent, as the control panel includes an outwardly-opening door associated with a compartment accessible from an exterior of the vehicle, such that the door can be closed to form a closed compartment (*see* Ex. 10, Miller's Accused Products Claim Charts, Claim 3; *see also* Ex. 4, '577 Patent, 9:4-8).

14. NRC's Infringing Rotating Wreckers with the Infringing Controls, also infringe dependent Claim 6 of the '577 Patent, as the wrecker controls include boom controls (*see* Ex. 10, Miller's Accused Products Claim Charts, Claim 6; *see also* Ex. 4, '577 Patent, 9:16-17).

15. NRC's Infringing Rotating Wreckers with the Infringing Controls, also infringe dependent Claim 11 of the '577 Patent, as the boom can be rotated around an axis generally perpendicular to the longitudinal frame axis (*see* Ex. 10, Miller's Accused Products Claim Charts, Claim 11; *see also* Ex. 4, '577 Patent, 9:39-41).

16. NRC's Infringing Rotating Wreckers with the Infringing Controls, also infringe independent Claim 16 of the '577 Patent, as these products are wrecker-type recovery vehicles that allow for a method of controlling the wrecker during the recovery of other disabled vehicles, and have the following features (*see* Ex. 10, Miller's Accused Products Claim Charts, Claim 16; *see also* Ex. 4, '577 Patent, 10:20-57):

a) a wrecker vehicle frame extending along a longitudinal axis (the vehicle frame including a vehicle body with side surfaces, and the vehicle frame carrying an extensible and retractable boom);

b) manually-manipulable wrecker controls located on and supported by a control panel, which is supported by the vehicle body and stored within an interior compartment of the vehicle body;

c) a control panel that includes an outwardly-opening door associated with the interior compartment accessible from an exterior of the vehicle, such that when the door is closed, a closed interior compartment is formed, and when the door is open, this exposes the wrecker controls to operator manipulation;

d) when the control panel door is opened, the control panel is moveable from a first, storage position within the interior compartment inside the vehicle exterior, to a second, operable position in which the control panel is displaced from and outside the interior compartment and the vehicle exterior (in a direction that is perpendicular to the longitudinal axis, with the control panel remaining supported by the vehicle body while in the second position); and

e) the wrecker controls can be manipulated when in the second position, such that an operator in a standing position adjacent the vehicle body and working the wrecker controls when the control panel is in the extended, second position has substantially expanded sightlines as



opposed to when the operator is in a standing position working the wrecker controls when the control panel is in the retracted, first position, and the displacement of the control panel to the second position comprises a strategic location of the wrecker controls, providing an operator with an ergonomically-enhanced work surface.

17. NRC's Infringing Rotating Wreckers with the Infringing Controls, also infringe dependent Claim 20 of the '577 Patent, as the boom may be controlled to lift a load either: (a) from a position adjacent a rear of the recovery vehicle to a position both rearwardly and substantially distant from the rear of the wrecker; or (b) from a position adjacent a front of the recovery vehicle to a position adjacent a side of the recovery vehicle (*see* Ex. 10, Miller's Accused Products Claim Charts, Claim 20; *see also* Ex. 4, '577 Patent, 11:14-20).

18. NRC's Infringing Rotating Wreckers with the Infringing Controls, also infringe dependent Claim 21 of the '577 Patent, as these products have a control panel that is mounted on a support positioned at a downwardly-angled orientation relative to ground to facilitate the creation of an ergonomic-oriented work station for the operator (*see* Ex. 10, Miller's Accused Products Claim Charts, Claim 21; *see also* Ex. 4, '577 Patent, 11:14-20).

**NRC's Willful and On-Going Infringement of the '577 Patent Has, and Will Continue to, Cause Substantial and Irreparable Damage to Miller**

19. NRC has known of Miller's '577 Patent since at least September 20, 2017, when NRC cited the '577 Patent in NRC's own patent application directed to an extendable and retractable rotating wrecker control panel patent – U.S. Pat. No. 9,981,832 B1 (*see* Ex. 9, the "'832 Patent"; Title: "Control Panel Assembly"; Filing Date: Sept. 20, 2017). In fact, during the prosecution of NRC's '832 Patent, the Patent Examiner said that Miller's '577 Patent was the "principal" reference (*see* Ex. 15 highlighted for emphasis, Examiner's 2/9/18 Office Action stating, "[r]egarding independent claims 1, and 18, (of the '832 Patent) the closest prior art as to

McConnell (the ‘577 Patent) discloses a control panel assembly...”; *see also id.* highlighted for emphasis, NRC also disclosed the ‘577 Patent on its Information Disclosure Statement for the ‘832 Patent). NRC also refused to cease manufacturing, sale and distribution of the Infringing Rotating Wreckers with the Infringing Controls, despite being previously sued by Miller for infringing the ‘577 Patent in the Tennessee Case (*see* ¶5, *supra*).<sup>5</sup>

20. Despite having knowledge of the ‘577 Patent, NRC continues to manufacture, market and sell its Infringing Rotating Wreckers throughout the U.S. NRC’s infringement constitutes an intentional, unfair effort to compete with Miller, and deprive Miller of business opportunities with rotating wrecker customers it reasonably expected, or expects, to obtain. This expectation is reasonable because there are no other U.S. manufactures or sellers of rotating wreckers with an extendable and retractable control panel, so every NRC Infringing Rotating Wrecker customer is a customer lost by Miller who would have otherwise purchased an Infringed Wrecker with Miller’s Raptor® Control Package.

21. NRC’s ongoing infringement has, and continues to, injure Miller, such that Miller is entitled to recover damages adequate to compensate it for infringement of Miller’s ‘577 Patent. NRC’s infringement will continue to injure Miller, causing lost customers and damage to Miller’s reputation and valuable business goodwill in the towing industry, until the Court enters an injunction prohibiting further infringement. The injunction should permanently prohibit NRC’s further manufacture, use, sale, offer for sale, marketing and importation of the Infringing Rotating Wreckers and the Infringing Controls.

**COUNT I**  
**Patent Infringement**  
**(under 35 U.S.C. § 271)**

---

<sup>5</sup> This case was dismissed as the Court found that NRC was not subject to personal jurisdiction in Tennessee. *See* Ex. 11, p.11.

22. Miller incorporates by reference Pars. 1-21, above, to show that NRC has infringed the ‘577 Patent.

23. Miller is the owner of the ‘577 patent, which is an unexpired, valid and enforceable utility patent, that generally discloses a retractable and extendable rotating wrecker control panel.

24. Through NRC’s manufacture, marketing, distribution and sale of the Infringing Rotating Wreckers and the Infringing Controls throughout the U.S., NRC has willfully and impermissibly (Miller has never licensed the ‘577 Patent to NRC) infringed Claims 1-3, 6, 11, 16 and 20-21 of the ‘577 Patent. Furthermore, NRC has been aware of the ‘577 Patent since at least September 20, 2017 (*see* ¶19, *supra*), which was called the “principal reference” (*see* Ex. 15) by the Patent Examiner for NRC’s own (later-in-time) ‘832 Patent application also covering the Infringing Rotating Wreckers and the Infringing Controls.

25. While these Claims are literally infringed, the Court may also find that the Infringing Rotating Wreckers and the Infringing Controls are equivalent to the claimed invention in Claims 1-3, 6, 11, 16 and 20-21.

26. For these reasons, as well as additional reasons that may be developed in discovery, NRC’s infringement has been willful and treble damages and attorney fees should be awarded pursuant to 35 U.S.C. §§ 284, 285. As Miller and NRC are in direct competition and the only competitors supplying products falling within the scope of the claims of the ‘577 Patent, Miller requests damages in the form of lost profits. At a minimum, Miller is entitled to damages in the amount of a reasonable royalty, pursuant to 35 U.S.C. § 284.

27. Additionally, NRC’s infringement has, and will continue to, irreparably injure Miller, unless NRC’s infringement is immediately and permanently enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, Miller requests that the Court enter judgment against NRC, as well as its subsidiaries, agents, servants, employees, attorneys and all persons in active concert or participation with it, and grant Miller the following relief:

A. An award to Miller of such damages pursuant to 35 U.S.C. § 284 that are adequate to compensate it for NRC's infringement, in an amount equal to Miller's lost profits, but in no event less than a reasonable royalty;

B. An award of prejudgment interest from the date infringement began of the Patent-in-suit;

C. A permanent injunction pursuant to 35 U.S.C. § 283 prohibiting further infringement of the Patent;

D. An award of treble damages pursuant to 35 U.S.C. § 284 to the extent that NRC's infringement is ultimately found to be willful;

E. An award to Miller of its reasonable costs and attorney fees pursuant to 35 U.S.C. § 285 upon a determination that this is an exceptional case justifying such fees; and

F. Such other and further relief as the Court may deem proper and just.

Date: April 5, 2021

Respectfully submitted,

*s/Liza M. Walsh*

Liza M. Walsh

Katelyn O'Reilly

William T. Walsh, Jr.

WALSH PIZZI O'REILLY FALANGA LLP

Three Gateway Center

100 Mulberry Street, 15th Floor

Newark, New Jersey 07102

(973) 757-1110  
lwalsh@walsh.law  
koreilly@walsh.law  
wwalsh@walsh.law

*Of Counsel:*  
Michael P. Mazza  
Paul R. Hale  
Michael P. Mazza, LLC  
686 Crescent Blvd.  
Glen Ellyn, Illinois 60137-4281  
Phone: (630) 858-5071  
Fax: (630) 282-7123  
mazza@mazzallc.com  
paul@mazzallc.com

*Attorneys for Plaintiff*  
*Miller Industries Towing Equipment Inc.*

### LOCAL RULE 11.2 CERTIFICATION

I hereby certify that, to the best of my knowledge, the matter in controversy is not the subject of any other pending or anticipated litigation in any court or arbitration proceeding, nor are there any non-parties known to Plaintiff that should be joined to this action. In addition, I recognize a continuing obligation during the course of this litigation to file and to serve on all other parties and with the Court an amended certification if there is a change in the facts stated in this original certification.

Dated: April 5, 2021

Respectfully submitted,

s/ Liza M. Walsh

Liza M. Walsh

Katelyn O'Reilly

William T. Walsh, Jr.

WALSH PIZZI O'REILLY FALANGA LLP

Three Gateway Center

100 Mulberry Street, 15<sup>th</sup> Floor

Newark, New Jersey 07102

(973) 757-110

*Of Counsel:*

Michael P. Mazza,

Paul R. Hale

Michael P. Mazza, LLC

686 Crescent Blvd.

Glen Ellyn, Illinois 60137-4281

Phone: (630) 858-5071

Fax: (630) 282-7123

mazza@mazzallc.com

paul@mazzallc.com

*Attorneys for Plaintiff*

*Miller Industries Towing Equipment Inc.*

**LOCAL RULE 201.1 CERTIFICATION**

I hereby certify that the above-captioned matter is not subject to compulsory arbitration in that the Plaintiff seeks, inter alia, injunctive relief.

Dated: April 5, 2021

Respectfully submitted,

s/ Liza M. Walsh

Liza M. Walsh

Katelyn O'Reilly

William T. Walsh, Jr.

WALSH PIZZI O'REILLY FALANGA LLP

Three Gateway Center

100 Mulberry Street, 15<sup>th</sup> Floor

Newark, New Jersey 07102

(973) 757-110

*Of Counsel:*

Michael P. Mazza,

Paul R. Hale

Michael P. Mazza, LLC

686 Crescent Blvd.

Glen Ellyn, Illinois 60137-4281

Phone: (630) 858-5071

Fax: (630) 282-7123

mazza@mazzallc.com

paul@mazzallc.com

*Attorneys for Plaintiff*

*Miller Industries Towing Equipment Inc.*