

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

_____	)	
LMK ENTERPRISES, INC. and LMK PIPE	)	
RENEWAL, LLC,	)	Civil Action No. _____
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
PERMA-LINER INDUSTRIES, INC.,	)	
METRO EQUIPMENT SERVICE, INC.,	)	
POLY-TRIPLEX CONSTRUCTION	)	
SOLUTIONS, INC., and STEVEN CUDD,	)	
individually,	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT AND DEMAND FOR JURY TRIAL**

COME NOW the Plaintiffs, LMK Enterprises, Inc. ("LMK") and LMK Pipe Renewal, LLC ("LMK Pipe Renewal"), and for their Complaint against the Defendants, Perma-Liner Industries, Inc. ("Perma-Liner"), Metro Equipment Service, Inc. ("Metro Equipment Service"), Poly-Triplex Construction Solutions, Inc. ("Poly-Triplex") and Steven Cudd ("Cudd"), state and allege as follows:

**THE PARTIES**

1. Plaintiff LMK is a corporation organized and existing under the laws of the State of Illinois with its principal place of business at 1779 Chessie Lane, Ottawa, Illinois.
2. Plaintiff LMK Pipe Renewal, LLC, is a limited liability company organized and existing under the laws of the State of Florida with its principal place of business at 1131 NW 55<sup>th</sup> Street, Fort Lauderdale, Florida.

3. Upon information and belief, Defendant Perma-Liner is a corporation organized and existing under the laws of the State of Florida with its principal place of business at 6196 126th Avenue North, Largo, Florida.

4. Upon information and belief, Defendant Metro Equipment Service is a corporation organized and existing under the laws of the State of Florida with its principal place of business at 9425 Sunset Drive, Suite 225, Miami, Florida.

5. Upon information and belief, Defendant Poly-Triplex is a corporation organized and existing under the laws of the State of Florida with its principal place of business at 17000 North Bay Road, #514, Sunny Isles, Florida.

6. Upon information and belief, Defendant Cudd is an individual residing at 17000 North Bay Road, #514, Sunny Isles, Florida.

#### **VENUE AND JURISDICTION**

7. This action arises under the patent laws of the United States, Title 35 United States Patent Code, and the common law of the State of Florida. This Court has subject matter jurisdiction over the patent claims pursuant to 28 U.S.C. §§ 1331 and 1338(a), and the Court has subject matter jurisdiction over the related common law claims pursuant to the Court's ancillary and supplemental jurisdiction under 28 U.S.C. §§ 1338(b) and 1367.

8. Upon information and belief, Defendant Metro Equipment Service has contracted with Miami-Dade County through the Miami-Dade Water and Sewer Department in connection with the Miami-Dade Pilot Lateral Lining Project, Contract No. S-793, to perform at least some of the complained of alleged infringing acts and has performed said acts of infringement within the State of Florida.

9. Upon information and belief, Defendant Perma-Liner resides within this District and has transacted with Defendant Metro Equipment Service and Defendant Poly-Triplex to perform at least some of the complained of alleged infringing acts and has performed said acts of infringement within the State of Florida.

10. Upon information and belief, Defendants Poly-Triplex and Cudd have performed at least some of the complained of alleged infringing acts within the State of Florida.

11. Jurisdiction and venue are proper under 28 U.S.C. § 1391 and 28 U.S.C. § 1400(b) since Defendants either actually reside in this District or reside elsewhere within the State of Florida.

**COUNT I**

**(Patent Infringement of U.S. Patent No. 6,039,079 - as to all Defendants)**

12. On March 21, 2000, United States Letters Patent 6,039,079 ("the '079 patent") entitled "APPARATUS AND METHOD FOR REPAIRING THE JUNCTION OF A SEWER MAIN LINE AND LATERAL PIPE" was duly and legally issued in the name of Larry W. Kiest, Jr., and the entire right, title and interest in and to said patent has been assigned to Plaintiff LMK, as reflected by the information appearing on the face of the patent. A copy of the aforesaid patent is attached hereto as Exhibit 1.

13. Plaintiff LMK has granted to Plaintiff LMK Pipe Renewal an exclusive license to use the inventions claimed in the '079 patent in various counties in Florida, including Miami-Dade County.

14. Upon information and belief, Defendant Perma-Liner has directly and contributorily infringed at least claims 7, 8 and 9 of the '079 patent, and has actively induced infringement of the patent by others, including but not limited to Defendants Metro Equipment Service, Poly-Triplex and Cudd, by performing the methods claimed in the patent, and by one or

more acts of making, using, offering for sale and/or selling pipelining products and services for use in performing the methods claimed in the patent, without authority to do so, all in violation of 35 U.S.C. § 271. Plaintiffs LMK and LMK Pipe Renewal have been damaged by Defendant Perma-Liner's infringement of the '079 patent and will continue to be damaged in the future unless Defendant Perma-Liner is permanently enjoined from infringing, either directly or indirectly, said patent.

15. Upon information and belief, Defendants Metro Equipment Service and Cudd have directly infringed at least claims 7, 8 and 9 of the '079 patent and threaten to continue the infringement by performing the methods claimed in the patent, and have actively induced infringement of the patents by others, including but not limited to Defendant Poly-Triplex, all in violation of 35 U.S.C. § 271. Plaintiffs LMK and LMK Pipe Renewal have been damaged by Defendants Metro Equipment's and Cudd's infringement of the '079 patent and will continue to be damaged in the future unless Defendants are permanently enjoined from infringing, either directly or indirectly, said patent.

16. Upon information and belief, Defendant Poly-Triplex has directly infringed at least claims 7, 8 and 9 of the '079 patent and threatens to continue the infringement by performing the methods claimed in the patent without authority to do so, all in violation of 35 U.S.C. § 271. Plaintiffs LMK and LMK Pipe Renewal have been damaged by Defendant Tri-Plex's infringement of the '079 patent and will continue to be damaged in the future unless Defendant Poly-Triplex is permanently enjoined from infringing, either directly or indirectly, said patent.

17. Upon information and belief, Defendants have both constructive and actual notice of Plaintiff LMK's patent and in particular that said patent was duly and legally issued, and

Defendants are aware or should be aware that their activities directly infringe, contributorily infringe and/or induce others to infringe the '079 patent.

18. Upon information and belief, Defendants' infringement of the '079 patent is now and has been intentional, willful, and deliberate, and objectively reckless.

**COUNT II**  
**(Tortious Interference With Advantageous Business**  
**Relationship – as to Defendants Poly-Triplex and Cudd)**

19. Plaintiffs hereby reallege paragraphs 1-18 and incorporate them herein by reference.

20. Plaintiffs formed a business relationship with Defendant Metro Equipment Service to provide sewer rehabilitation services for sanitary sewer laterals in Miami-Dade County in connection with the Miami-Dade Pilot Lateral Lining Project, Contract No. S-793.

21. In furtherance of said relationship, Defendant Metro Equipment Service used Plaintiffs' experience and patented technology to satisfy the pre-bid qualifications for lateral lining, Plaintiff LMK Pipe Renewal and Defendant Metro Equipment Service attended the Mandatory Pre-Bid meeting with Defendant Metro Equipment Service on February 21, 2006, and Plaintiff LMK Pipe Renewal used the patented technology to rehabilitate lateral sewer pipes as a subcontractor to Defendant Metro Equipment Service.

22. Upon information and belief, neither Defendant Poly-Triplex nor Defendant Cudd could satisfy the pre-bid qualifications for lateral lining.

23. Defendants Poly-Triplex and Cudd had knowledge of the business relationship between Plaintiffs and Defendant Metro Equipment Service and intentionally and unjustifiably interfered with that relationship in transacting with Defendant Metro Equipment Service to exclude Plaintiff LMK Pipe Renewal from additional lateral lining work under Contract No. S-

793, with Defendants Poly-Triplex and Cudd performing the additional lateral lining work using the infringing methods referenced in Count I of the Complaint.

24. Defendants LMK and LMK Pipe Renewal have been damaged by Defendants' tortious conduct in an amount not yet determined.

WHEREFORE, Plaintiffs LMK and LMK Pipe Renewal pray for following relief:

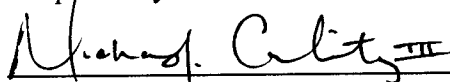
- a. a judgment against all Defendants as to Count I in the Complaint;
- b. a judgment that Defendant Perma-Liner has infringed the '079 patent;
- c. a judgment that Defendant Metro Equipment Service has infringed the '079 patent;
- d. a judgment that Defendant Poly-Triplex has infringed the '079 patent;
- e. a judgment that Defendant Cudd has infringed the '079 patent;
- f. an injunction enjoining and restraining all Defendants, their officers, directors, agents, servants, employees, attorneys and all others acting under or through them, directly or indirectly, from infringing the '079 patent;
- g. a judgment that Defendants' infringement of the '079 patent has been willful;
- h. a judgment requiring Defendants to pay damages under 35 U.S.C. § 284 for the infringement, including treble damages due to the knowing, willful and wanton nature of Defendants' conduct;
- i. a judgment and order directing Defendants to pay the costs of this action (including all disbursements) and attorneys' fees as provided by 35 U.S.C. § 285;
- j. an award of pre-judgment interest from the date of first patent infringement to entry of judgment;

- k. a judgment against Defendants Poly-Triplex and Cudd as to Count II in the Complaint;
- l. a judgment requiring Defendants Poly-Triplex and Cudd to pay damages for the tortious conduct in Count II; and
- m. such other and further relief as the Court deems equitable under the circumstances, including where appropriate, punitive damages for the Defendants' conduct.

**DEMAND FOR JURY TRIAL**

Plaintiffs LMK and LMK Pipe Renewal demand trial by jury as to all issues triable by jury in the case as a matter of right.

Respectfully submitted,



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