

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

DAVID TAWIL, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

ILLINOIS TOOL WORKS INC. and  
SOUTH/WIN LTD.,

Defendants.

CASE NO. \_\_\_\_\_

JURY TRIAL DEMANDED

**CLASS ACTION COMPLAINT**

Plaintiff David Tawil, on behalf of himself and all others similarly situated, alleges as follows:

**NATURE OF CASE**

1. Defendants Illinois Tool Works, Inc. (“ITW”) and South/Win Ltd. (“SW,” and collectively, “Defendants”) manufacture, distribute, and promote Rain-X windshield washer fluid for use in motor vehicles. Defendants tell consumers that Rain-X products can “outsmart the elements™” through advance water-repelling technology.<sup>1</sup>

2. Yet it is consumers who are being ‘outsmarted’—or deceived—by Defendants. Rain-X is marketed and sold as though it were suitable for use in all mass-produced vehicles. But Rain-X is not suitable for *all* motor vehicles—a key fact that Defendants hide from consumers. When installed in the wrong vehicles—including, Volkswagen, Audi, Mini Cooper, BMW,

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<sup>1</sup> See Rain-X Website, available at <https://www.rainx.com/>.

Mercedes Benz, and Chrysler vehicles—Rain-X damages the vehicles’ windshield washer fluid sensors, making them non-functional unless repaired at a cost between \$100 and \$200. The damage has been so rampant, that some automotive manufacturers have issued technical service bulletins to dealerships warning them that Rain-X can damage electronic windshield washer sensors.

3. Defendants have long known that Rain-X products cause this damage. In March 2014, for example, Defendants responded to a customer complaint on Facebook by saying they were aware of the problem and would “soon” address it. And yet, well over a year later, Rain-X’s packaging continues to omit any disclosure of the risk of windshield washer fluid sensor damage and does not warn consumers that the product may be unsuitable for their vehicles. Meanwhile, Defendants have yet to alter the Rain-X formula to eliminate the resultant sensor damage.

4. As a result of Defendants’ wrongful conduct, Plaintiff and other members of the proposed Class have bought and installed Rain-X windshield washer fluid that was unsuitable for their vehicles, leading to damaged electronic windshield washer fluid sensors requiring expensive repairs. Plaintiff thus seeks relief pursuant to the New Jersey Products Liability Act, 28A:58C *et seq.*; New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8 *et seq.*; an injunction barring Defendants from marketing and selling Rain-X for use in all vehicles; and punitive damages.

### **PARTIES**

5. Plaintiff David Tawil is a citizen and resident of Ringoes, New Jersey.

6. Defendant Illinois Tool Works, Inc. is a Delaware corporation with its headquarters in Glenview, Illinois.

7. Defendant South/Win Ltd. is a North Carolina corporation with its headquarters in Greensboro, North Carolina.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over this case pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d). The aggregated claims of the individual proposed class members exceed the sum or value of \$5,000,000, exclusive of interest and costs, and members of the plaintiff class are citizens of States different from Defendants.

9. This Court also has jurisdiction over Defendants because they have sufficient minimum contacts with Illinois, or otherwise intentionally avail themselves of the markets within Illinois through the promotion, sale, marketing, and distribution of their products such that the exercise of jurisdiction by this Court is proper and necessary. In addition, this Court has jurisdiction over ITW because it maintains its principal headquarters in Illinois and in this District. Many of the events complained of below occurred in or emanated from ITW's corporate headquarters in Glenview, Illinois.

10. Venue is proper in this District under 28 U.S.C. § 1391(a) because Defendant ITW resides in this District and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

### **FACTUAL ALLEGATIONS**

#### **A. Windshield Washer Sensors Are a Key Safety Component Designed to Maintain Road Visibility.**

11. Under federal law, "[e]ach multipurpose passenger vehicle, truck, and bus shall have a windshield washing system that meets the requirements of SAE Recommended Practice J942 (1965)." 49 C.F.R. § 571.104.

12. Accordingly, all modern vehicles are equipped with a windshield washer system that typically consists of the following: a windshield fluid reservoir in the engine compartment; windshield washer fluid; a pump; tubing connected to a spray nozzle; windshield wiper blades; a low fluid level sensor; a dashboard-mounted low fluid level warning light; and a switch that can be activated by the driver to spray windshield washer fluid onto the windshield. The low fluid sensor is located in the windshield fluid reservoir and signals via a warning light on the vehicle's dashboard when windshield washer fluid needs to be added to the reservoir.

13. The windshield washer system provides an important safety function by maintaining road visibility when it snows or rains, or by removing ice, bugs, mud, dust, grime, or road salt which may accumulate on the windshield. For this safety system to function properly, it is critical that the warning system notify the driver that the vehicle is running low on windshield washer fluid.

**B. Defendants Market Rain-X for Use in All Vehicles and Sell it at a Premium Price.**

14. The Rain-X brand was developed in the 1970s and is now sold nationwide in gas stations, vehicle repair shops, and other retail outlets. Windshield washer fluids are among the more popular Rain-X products, and they include: Rain-X All-Season Windshield Washer Fluid; Rain-X 2-in-1 Windshield Washer Fluid; Rain-X De-Icer Windshield Washer Fluid; and Rain-X Bug Remover Windshield Washer Fluid (collectively, "Rain-X," "product," or "products").



15. According to Defendants, these Rain-X windshield washer fluids are specially formulated to improve road visibility, and they “lead[] the automotive aftermarket in glass care.”<sup>2</sup> Such glass care is essential to safety, Defendants tell consumers, because “90% of driving decisions are based solely on vision.”<sup>3</sup>

16. These Rain-X products each cost about twice as much as windshield washer fluids sold by competitors. Each is marketed as a premium washer fluid, and none is advertised as suitable for only certain vehicles.

17. For example, Rain-X All-Season Windshield Washer Fluid is marketed online as “formulated with advanced technology for streak-free cleaning power. The washer fluid applies water beading technology to your windshield for greater driving visibility.”<sup>4</sup> Its product features

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<sup>2</sup> Wiper and Weather Facts, <https://www.rainx.com/about/> (last accessed Aug. 3, 2015).

<sup>3</sup> Wiper and Weather Facts, <https://www.rainx.com/tips-information/wiper-weather-facts/> (last accessed Aug. 3, 2015).

<sup>4</sup> Rain-X All-Season Windshield Washer Fluid, <https://www.rainx.com/product/windshield-washer-fluid/rain-x-all-season-windshield-washer-fluid/> (last accessed Aug. 3, 2015).

are listed as: “Powers off bugs, road grime and salt; Removes light snow and frost; Effective to 0° F; Instantly applies Rain-X® technology to the windshield to repel rain, sleet and snow.”<sup>5</sup>

Consumers seeking more information are provided the following product usage instructions online: “Fill windshield washer reservoir with Rain X® All Season Windshield Washer Fluid without diluting product. Use in conjunction with your Rain X® windshield wipers.”<sup>6</sup>

18. Similarly, Rain-X 2-in-1 Windshield Washer Fluid is marketed online as “formulated with advanced technology for streak-free cleaning power. The washer fluid applies water beading technology to your windshield for greater driving visibility.”<sup>7</sup> Its product features are listed as: “Powers off bugs, road grime and salt; Melts precipitation & instantly applies Rain-X® technology to the windshield; Powers off bugs & road grime; Repels rain, frost, snow, mud and soil for greater visibility; Effective to -25° F as a premium windshield washer fluid.”<sup>8</sup> Consumers are provided the following product usage instructions online: “Fill windshield washer reservoir with Rain-X® 2-in-1 Windshield Washer Fluid without diluting product. Use in conjunction with your Rain X® windshield wipers.”<sup>9</sup>

19. Rain-X De-Icer Windshield Washer Fluid is also marketed as “formulated with advanced technology for streak-free cleaning power. The washer fluid applies water beading technology to your windshield for greater driving visibility.”<sup>10</sup> Its product features are listed as:

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Rain-X 2-in-1 Windshield Washer Fluid, <https://www.rainx.com/product/windshield-washer-fluid/rain-x-2-in-1-windshield-washer-fluid/> (last accessed Aug. 3, 2015).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Rain-X De-Icer Windshield Washer Fluid, <https://www.rainx.com/product/windshield-washer-fluid/rain-x-de-icer-windshield-washer-fluid/> (last accessed Aug. 3, 2015).

“Melts precipitation to reduce adherence of frost, ice and snow; Instantly applies Rain-X® technology to the windshield for greater driving visibility; Effective to -25° F.”<sup>11</sup> Like the previous Rain-X products, the only instructions to consumers are “Fill windshield washer reservoir with Rain-X® De-Icer Windshield Washer Fluid without diluting product. Use in conjunction with your Rain X® windshield wipers.”<sup>12</sup>

20. Lastly, Rain-X Bug Remover Windshield Washer Fluid is marketed as “formulated with advanced technology for streak-free cleaning power. The washer fluid applies water beading technology to your windshield for greater driving visibility.”<sup>13</sup> Its product features are listed as: “Instantly applies Rain-X® technology to the windshield; Powers off bugs & road grime; Repels rain, mud and soil for greater visibility; Effective to 32° F.”<sup>14</sup> The product instructions are: “Fill windshield washer reservoir with Rain-X® Bug Remover Windshield Washer Fluid without diluting product. Use in conjunction with your Rain X® windshield wipers.”<sup>15</sup>

21. The instructions provided online are consistent with product labeling, which is visible here:

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<sup>11</sup> *Id.*

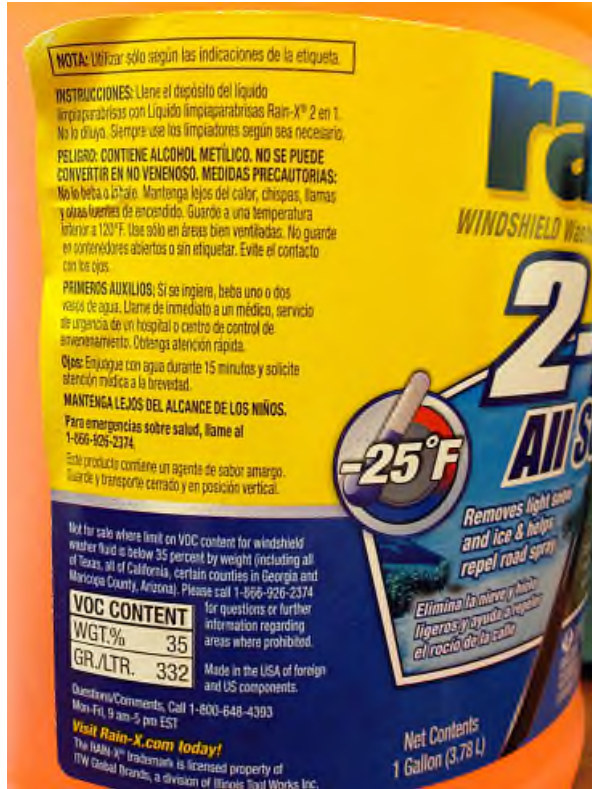
<sup>12</sup> *Id.*

<sup>13</sup> Rain-X Bug Remover Windshield Washer Fluid, <https://www.rainx.com/product/windshield-washer-fluid/rain-x-bug-remover-windshield-washer-fluid/> (last accessed Aug. 3, 2015).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*









22. Automotive products routinely warn consumers on packaging if a product is not compatible with specific vehicles or parts. Rain-X’s packaging and website, in contrast, fail to disclose the material fact that these Rain-X products are not suitable for use in all vehicles. Absent a product warning or instruction, a reasonable consumer would have no reason to expect that a particular windshield washer fluid should not be used with his or her vehicle.

**C. Rain-X Damages Washer-Level Sensors In Many European- and American-Brand Vehicles.**

23. Rain-X is incompatible with a common type of windshield washer fluid sensor known as a “continuity prong washer sensor.” This sensor is frequently found in European- and American-brand vehicles, such as Volkswagen, Audi, Mini Cooper, BMW, Mercedes Benz and Chrysler.

24. The continuity prong washer sensor detects the presence of washer fluid by passing an electrical charge between two metal prongs, which are visible in this picture of the sensor:



25. Electricity is conducted between these prongs only when they are immersed in the washer fluid. When the fluid level falls below the level of the prongs, an electrical charge does not pass, and the sensor triggers a warning light on the dashboard indicating that washer fluid is low.

26. The use of these four Rain-X windshield washer fluids inhibits a charge from passing between the metal prongs even when liquid is present. In essence, Rain-X reacts with and/or coats the sensor's metal prongs with electrically insulating chemical compounds that isolate the metal electrodes and render them inoperative. These chemical compounds likely consist of silicon based polymers including polysiloxane, hydroxyl-terminated polydimethylsiloxane, and/or derivative compounds. As a result, the sensor fails to detect whether washer fluid is present. Because a charge does not pass, the sensor triggers the low fluid warning light, which remains illuminated whether or not washer fluid is present.

27. An image of a sensor damaged by Rain-X is visible here:



**D. Defendants Have Long Been Aware of the Damage Caused By Rain-X But Have Not Warned Consumers Or Provided Redress.**

28. Since at least 2009, consumers with vehicles equipped with continuity prong windshield washer fluid sensors have complained that their sensors malfunction and fail after using Rain-X washer fluid. Examples of consumer complaints found in online forums include the following:<sup>16</sup>

2009 Volkswagen GTI: I drive an 09 GTI. With the stock fluid from the dealership, I had no problems even in the extreme cold temperature my area has recently experienced. Only problem was the fluid did not clean very well. So, I decided to use Rain-X (the yellow) stuff. I replaced the stock stuff with the yellow. Works fine. Cleans nice. No warnings for a few days. Then one cold morning, the warning light flashes on my dashboard. I checked the container, but there's still a good amount of fluid. There is no possible way that I could use up a tank of fluid in the few days unless I was constantly spraying that stuff. I think to

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<sup>16</sup> These customer complaints are reproduced verbatim, and include uncorrected spelling and grammatical errors in the original.

myself, maybe the engine is not warmed up. I commute to work so its a 1 hour drive. Engine should be warm enough. Warning sign still flashes on my dashboard. It was extremely annoying driving all the way to work with that warning flashing in my face. What is broken? How do I fix?

<http://www.golfmkv.com/forums/archive/index.php/t-77070.html>

(Ricesteam – Feb. 4, 2009)

2008 Dodge Ram 3500: ok my low windshield washer fluid light came on and I ignored it for 6 weeks. Went to AutoZone and got some rain x washer fluid like always fill it up and now two days later the dang light is still on...what gives? Is there a fuse or can I just put a jumper in the harness? Who needs a low washer fluid light anyways?

<http://www.cumminsforum.com/forum/07-5-09-3rd-gen-6-7l-non-powertrain/353218-low-windshield-washer-fluid.html>

(king cotton – Jan. 3, 2011)

2010 Mercedes E550: It seems ever since I've been using the Rain-X de-icer windshield washer fluid I frequently get a "washer fluid low" warning no matter how much fluid is in the reservoir. Anybody have a similar issue?

<http://mbworld.org/forums/e-class-w212/385715-washer-fluid.html>

(mg-E550 – Feb. 1, 2011)

29. Customers have also complained directly to Defendants, through its Facebook page. Examples of such complaints include the following:

I used your windshield washer fluid in my new Jeep Grand Cherokee 2012 and the windshield washer fluid censer is now showing low fluid all the time even though it is full. I called my Jeep dealer and they said it was because I used your product. They went on to say that your windshield washer fluid damaged the sensor. Can you please contact me to see how this will get fixed?

(Matt Wilson – February 17, 2014)

The sensor for my windshield washer fluid is corroded due to the rainx product. Do you have any suggestions other than spending over \$100 to replace it. This is terrible for your product and branding.

(Barry A. Linchuck – April 17, 2014)

I just wanted to share with you that there \*should\* be a recall. I was told by my Dealer that due to some specific ingredient in Rain-X that it has damaged the entire system and would need to be replaced. Cost about \$300 replacement for the entire system, because of the damage. My vehicle was 3 years old. I asked my dealer if anything else would cause it and they said only the chemical that is in Rain-X

Please inform customers before they have damage to their cars and you have more issues. I will also be informing the BBB and will get any documentation from my Dealer as well. Thank you.

(Wendy Stumpf – May 16, 2014)

Hey Rain-X, just wanted to say thank you! After 3 days of using your 2-in-1 orange windshield washer fluid in my 2013 VW Golf R, I now have a ruined washer fluid sensor that has to be replaced. Great stuff you've got there!

So who should I send the \$190.90 repair bill to?

(Brian Samson – January 13, 2015)

30. In addition, vehicle manufacturers, such as Chrysler and Volkswagen, have identified this problem in technical bulletins issued to vehicle technicians:

Vehicles that use a continuity “prong” style washer level sensor are designed to work with most alcohol based water solvents. We have received information that some rain repellent solvents may not register properly. The rain repellent washer solvents have been found to coat the sensor tip with a residue that will not allow an accurate reading. Some of the rain repellent washer solvents are orange in color, but may not necessarily be.

STAR Case bulletin S14323000018. *See also* Volkswagen Tech-Tips bulletin 92-14-02 (including a picture of Rain-X and describing how it “can cause residues to form on the sensor which causes the washer fluid lamp to remain on when the reservoir is full.”)

31. Defendants have acknowledged that they are aware of these reports. In response to a customer complaint posted on Facebook, Defendant ITW responded on this same platform: “We’ve asked our Tech Team to look into this, and we will pass along any info.”<sup>17</sup> About a month later, on March 24, 2014, in response to another Facebook post asking whether they were aware of the problem, ITW responded: “Yes, we are aware. Our tech team has been looking into it, and we will have a response soon.”<sup>18</sup>

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<sup>17</sup> Rain-X, Comment to Post by Matt Wilson, Facebook (February 21, 2014 8:53 AM), [https://www.facebook.com/RainXOfficial/posts\\_to\\_page](https://www.facebook.com/RainXOfficial/posts_to_page).

<sup>18</sup> Rain-X, Comment to Post by Ben Klein, Facebook (March 24, 2014, 12:05 PM), [https://www.facebook.com/RainXOfficial/posts\\_to\\_page](https://www.facebook.com/RainXOfficial/posts_to_page).

32. To date, however, Defendants have not warned consumers that their Rain-X washer fluid is not suitable for certain vehicles. Any changes in the Rain-X formula, moreover, have not eliminated this problem. Defendants continue to sell their product at a premium price, without disclosing this known problem or altering Rain-X's design, thus taking advantage of consumers.

33. As a result, owners of vehicles with incompatible sensors are unaware at the point of sale that they have purchased an item that will damage their vehicle. Thus, Rain-X's incompatibility with certain windshield washer fluid sensors was not known and was not reasonably knowable by Plaintiff or the members of the proposed class before their purchases or before they experienced the problem first hand.

34. Defendants, by contrast, are well aware that a reasonable consumer who owns a vehicle with an incompatible sensor would consider this fact important in deciding whether to purchase Rain-X and such consumers would not buy Rain-X if this incompatibility were disclosed to them in advance of their purchases.

35. The cost to repair a continuity prong washer sensor (including labor) ranges from (approximately) \$100 to \$200.

36. Consumers have reported that Defendants routinely refuse to cover the costs of repair.



**PLAINTIFF'S EXPERIENCE**

Plaintiff David Tawil

37. Plaintiff Tawil purchased Rain-X in 2014 in New Jersey, for personal use in his Volkswagen GTI.

38. In February 2015, Plaintiff noticed that the low fluid warning light came on, indicating that the washer fluid level was low. When he checked the reservoir, however, it was not low.

39. Plaintiff took his vehicle to a Volkswagen dealer, who advised him that Rain-X had created a build-up on the sensor that prevented the sensor from reading accurately and caused the warning light to come on. He paid the dealer to repair the sensor at a cost of approximately \$130.

40. Plaintiff would not have purchased and used Rain-X had Defendants disclosed that Rain-X was incompatible with the windshield washer fluid sensor in his vehicle.

**CLASS ACTION ALLEGATIONS**

41. Plaintiff Tawil brings this action on behalf of himself and a proposed class, which may be initially defined as:

*All persons with vehicles that are equipped with continuity prong windshield washer fluid sensors who purchased Rain-X windshield washer fluid in New Jersey.*

42. Excluded from the class are: Defendants; any affiliate, parent, or subsidiary of Defendants; any entity in which Defendants have a controlling interest; any officer, director, or employee of Defendants; any successor or assign of Defendants; anyone employed by counsel

for plaintiff in this action; and any judge to whom this case is assigned, his or her spouse, and all persons within the third degree of relationship to them, as well as the spouses of such persons.

43. This action has been brought and may properly be maintained on behalf of the proposed class set forth above pursuant to Federal Rule of Civil Procedure Rule 23.

44. Numerosity. Thousands of bottles of Rain-X have been sold to consumers. Members of the proposed class likely number in the hundreds if not thousands and are too numerous to practically join in a single action.

45. Existence and predominance of common questions. Common questions of law and fact exist as to all members of the proposed class and predominate over questions affecting only individual class members. These common questions include whether:

- a. Rain-X washer fluid is incompatible with continuity prong windshield washer fluid sensors;
- b. Defendants knew about the incompatibility and if so, when they discovered it;
- c. Defendants disclosed this incompatibility to potential buyers;
- d. Defendants committed an unlawful act in violation of New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1 *et seq.*; and
- e. Defendants' product failed to contain adequate warnings or instructions or was designed in a defective manner.

46. Typicality. Plaintiff's claims are typical of those of the proposed class because Plaintiff and the members of the proposed class all purchased Rain-X washer fluid reasonably believing that it would be compatible with their vehicles.

47. Adequacy. Plaintiff is an adequate representative of the proposed class because his interest does not conflict with the interests of the proposed class members. Plaintiff has retained counsel competent and experienced in complex class action litigation, and intends to prosecute this action vigorously. The interests of the proposed class members will be fairly and adequately protected by Plaintiff and his counsel.

48. Superiority. This class action is superior to other available means for the fair and efficient adjudication of this dispute. While the individual injuries suffered by each proposed class member are meaningful, they are not of such magnitude as to make the prosecution of individual actions against Defendants economically feasible. Even if class members could afford individualized litigation, the court system could not. In addition to the burden and expense of managing many actions arising from the defect, individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation also increases delay and expense for the parties and court system. By contrast, the class action device presents far fewer management difficulties and provides the benefit of a single adjudication, economy of scale, and comprehensive supervision by a single court.

49. The proposed class may also be certified because:

- a. The prosecution of individual actions would create a risk of inconsistent adjudications, which would establish incompatible standards of conduct for Defendants;
- b. The prosecution of individual actions could result in adjudications, which as a practical matter, would be dispositive of the interests of class members who are not parties to the adjudications, or which would substantially impair their ability to protect their interests; and

- c. Defendants have acted or refused to act on grounds generally applicable to the proposed class, making appropriate final and injunctive relief with respect to the members of the proposed class as a whole.

**FIRST CAUSE OF ACTION**  
**(Product Liability Claim For Failure to Warn**  
**Pursuant To N.J.S.A. 2A:58C *et seq.*)**

50. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

51. Defendants manufactured Rain-X and placed this product into the stream of commerce in a defective or unreasonably dangerous condition.

52. Rain-X, which damaged Plaintiff's and Class Members' vehicles, is not reasonably fit, suitable or safe for its intended purposes because it failed to contain adequate warnings or instructions. As discussed, Rain-X's packaging and labeling fail to warn or instruct that it is incompatible with certain washer fluid sensors. Absent this essential warning or instruction, a reasonable consumer would not be aware that Rain-X damages these sensors and is not suitable for use in all vehicles.

53. Defendants possess knowledge of these dangerous propensities, and know or should know that Rain-X will cause the harms described herein absent a warning.

54. Defendants had a duty to warn that their product possesses these dangerous propensities to damage necessary safety equipment in class members' vehicles, and there is unequal knowledge with respect to the risk of harm caused by Rain-X.

55. Rain-X's packaging or labeling contains no warning of these risks, let alone an adequate warning.

56. As a direct and proximate cause of these defects, Plaintiff and Class Members suffered damages, including to their windshield washer sensors.

57. Plaintiff and Class Members seek damages for these harms and other recovery allowed by law. In addition, Plaintiff and Class Members seek punitive damages. Defendants deliberately concealed the fact that Rain-X is not suitable for use in all vehicles, and they omitted this defect with knowledge of a high degree of probability of harm and reckless indifference to consequences. Punitive damages are thus available because Defendants purposefully manufacture their dangerous products with insufficient warnings.

**SECOND CAUSE OF ACTION**  
**(Product Liability Claim For Design Defect Pursuant To N.J.S.A. 2A:58C *et seq.*)**

58. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

59. Defendants' Rain-X, which damaged Plaintiff's and Class Members' vehicles, is not reasonably fit, suitable or safe for its intended purposes because it was designed in a defective manner. Alternate designs exist for window washer fluid that are both technologically feasible and practical for use in Plaintiff's and Class Members' vehicles and would have reduced or prevented Plaintiff's and Class Members' harms.

60. Because another formulation for Rain-X was available and would have not caused damages to the Class Members' vehicles, the formulation of the product solution was defective.

61. As a direct and proximate cause of these defects, Plaintiff and Class Members suffered damages, including to their windshield washer sensors.

62. Plaintiff and Class Members seek monetary damages for these harms and other recovery allowed by law, including punitive damages, because Defendants purposefully marketed or sold their defective products with reckless indifference to the consequences.

**THIRD CAUSE OF ACTION**  
**(Violations of the New Jersey Consumer Fraud Act,  
N.J. Stat. Ann. § 56:8-1 *et seq.*)**

63. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

64. As discussed, Plaintiff and class members are consumers who purchased Rain-X windshield washer fluid in New Jersey. Defendants own, promote, and distribute Rain-X to consumers throughout the United States, including to Plaintiff and the proposed class members. This conduct affects trade and commerce.

65. To sell their windshield washer fluid, Defendants intentionally or knowingly concealed or omitted the material fact that Rain-X is not suitable for use in certain vehicles.

66. Rain-X's incompatibility with and propensity to damage certain washer fluid sensors is a material fact. A reasonable consumer who has a vehicle with one of the affected sensors would consider this incompatibility to be important in deciding whether to purchase Rain-X. Had Plaintiff known these material facts, he would not have purchased Rain-X.

67. By failing to disclose that Rain-X damages sensors in certain vehicles, Defendants have engaged, and continue to engage, in unlawful practices, including the knowing concealment, suppression, or omission of the material fact that Rain-X is incompatible with certain vehicles. These acts and practices offend established public policy because the harm Defendants cause consumers by concealing and omitting Rain-X's incompatibility with certain sensors outweighs any legitimate benefit associated with such practices.

68. As a direct and proximate result of Defendants' unlawful conduct in violation of the New Jersey Consumer Fraud Act, Plaintiff and class members have been damaged and they are entitled to a refund pursuant to N.J.S.A. 56:8-2.11.

69. Plaintiff and class members are also entitled to attorneys' fees, filing fees, and costs of suit because Defendants committed the unlawful practice described here.

70. Pursuant to N.J. Stat. Ann. § 56:8-20, Plaintiff will serve the New Jersey Attorney General with a copy of this class action complaint.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

- a. For an order certifying the proposed class, and appointing Plaintiff and his counsel to represent the class;
- b. For an order requiring Defendants to:
  - i. Immediately disclose to all existing and prospective customers that Rain-X is incompatible with certain vehicles;
  - ii. Reimburse class members who have already paid to repair or replace their windshield washer fluid sensors;
  - iii. Repair windshield washer fluid sensors that have already been damaged by Rain-X free of charge; and
  - iv. Reimburse or refund Plaintiff and the class for the cost of Rain-X.
- c. For an order enjoining any such unlawful conduct by Defendants in the future and awarding Plaintiff and class members monetary, actual, statutory, and punitive damages;



- d. For an order awarding Plaintiff and class members pre- and post-judgment interest;
- e. For an order awarding Plaintiff and the class members reasonable attorneys' fees, filing fees, and costs of suit, including expert witness fees; and
- f. For an order awarding such other and further relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all claims so triable.

DATED: August 4, 2015

Respectfully submitted,

By: /s/ Edward A. Wallace  
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
David Tawil, on behalf of himself and all others similarly situated
(b) County of Residence of First Listed Plaintiff Hunterdon County, New Jersey
(c) Attorneys (Firm Name, Address, and Telephone Number)
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DEFENDANTS
Illinois Tool Works, Inc. and South/Win, Ltd.
County of Residence of First Listed Defendant Cook County, Illinois
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State PTF 1 DEF 1
Citizen of Another State PTF 2 DEF 2
Citizen or Subject of a Foreign Country PTF 3 DEF 3

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause)
Class Action Fairness Act, 28 U.S.C. § 1332(d); New Jersey Products Liability Act, 28A:58C, New Jersey

VII. Previous Bankruptcy Matters (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary.)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMANDS CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

IX. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER
X. This case (check one box) Is not a refiling of a previously dismissed action is a refiling of case number previously dismissed by Judge

DATE August 4, 2015 SIGNATURE OF ATTORNEY OF RECORD /s/ Edward A. Wallace