

STATE OF INDIANA }
 }SS:
COUNTY OF ALLEN }

IN THE ALLEN SUPERIOR COURT
CAUSE NO.: **02D01-2007-CT-000344**
Allen Superior Court 1

TYLER TOMPKINS, through his Legal Guardian, }
CLAIRE TOMPKINS, and CLAIRE TOMPKINS, }
Individually }

Plaintiffs,

-vs-

HERRENKNECHT TUNNELLING SYSTEMS }
USA, INC. and SHAMBAUGH & SON, L.P., }

Defendants.

TRIAL BY JURY DEMANDED

COMPLAINT FOR DAMAGES

Come now the Plaintiffs, Tyler Tompkins, through his legal guardian, Claire Tompkins, and Claire Tompkins, Individually, (hereinafter collectively as “Plaintiffs” or “Tyler” and “Claire,” respectively), by counsel, Robert J. Boughter of **BOUGHTER SINAK, LLC** and Stephen M. Wagner and Timothy F. Devereux of **WAGNER REESE, LLP** and for their cause of action against the Defendants, Herrenknecht Tunnelling Systems USA, Inc. and Shambaugh & Son, L.P. (hereinafter collectively as “Defendants” or “Herrenknecht” and “Shambaugh” respectively) allege and state as follows:

I.
PARTIES

1. At all relevant times herein, Tyler and Claire were husband and wife and resided at 3606 Meda Pass, Fort Wayne, Indiana 46809, County of Allen, with their minor children.

2. On May 27, 2020, Claire was appointed temporary legal guardian over Tyler due to catastrophic injuries Tyler suffered on April 16, 2020, that have rendered him completely incapacitated, both physically and mentally.

3. The Defendant, Herrenknecht Tunnelling Systems USA, Inc., is a Foreign For-Profit Corporation, authorized to do business in the State of Indiana, with its principle place of business

located at 1613 132nd Ave. E., Ste. 200, Sumner, Washington, 98390. Herrenknecht holds itself out as the leading premium supplier of comprehensive technical solutions in mechanized tunneling for underground infrastructure projects around the world.

4. The Defendant, Shambaugh & Son, L.P. is a Foreign Limited Partnership authorized to do business in the State of Indiana with its principal place of business headquartered at 7614 Opportunity Drive, Fort Wayne, Indiana 46825. Shambaugh holds itself out as a leading construction engineering services company, specializing in design/build services, LEED, mechanical, electrical, plumbing installation, fire protection services, food process engineering, and energy solutions.

II. **STATE COURT JURISDICTION**

5. Plaintiffs restate paragraphs 1-4 of Part I of Plaintiffs' Complaint as though fully set forth herein in paragraph 5 of Part II of Plaintiffs' Complaint.

6. The Allen County Superior Court has personal jurisdiction over the parties of this cause of action because Tyler's incident giving rise to the allegations against Defendants, described *infra*, occurred at Fort Wayne's Deep Rock Tunnel Project located at 705 Glasgow Avenue, Fort Wayne, Indiana 46803, County of Allen. Further, both Defendants were involved in said project and Shambaugh's principal place of business is Fort Wayne, Indiana, County of Allen.

7. Venue is proper in Allen County pursuant to Trial Rule 75(A)(1)(2)(4) and (5). To wit, Plaintiffs reside in Allen County, Shambaugh's headquarters and principal place of business is located in Allen County, and the subject incident occurred in Allen County.

8. The Allen County Superior Court has subject matter jurisdiction over this cause because all of Plaintiffs' claims herein are Indiana state law claims and there is no federal question implicated.

9. Federal diversity jurisdiction does not exist in this cause because Plaintiffs and the Defendant, Shambaugh, are citizens of the State of Indiana. See *Hertz Corp v. Friend*, 559 U.S. 77

(2010)(For purpose of federal diversity jurisdiction, a corporation's place of residence is its principal place of business; complete diversity between all Plaintiffs and all Defendants must exist to invoke federal diversity jurisdiction).

III.
THE INCIDENT-COMMON TO ALL COUNTS

10. Plaintiffs restate paragraphs 1-9 of Parts I and II of Plaintiffs' Complaint as though fully set forth herein as paragraph 10 of Part III of Plaintiffs' Complaint.

11. On April 16, 2020, Tyler was working within the course and scope of his employment with Salini Impregilo SPA, Inc./The Lane Construction Corporation as a bottom lander stationed at the bottom of the Pump Station Shaft in the underground tunnel located at the City of Fort Wayne Utilities' Deep Rock Tunnel Project, 705 Glasgow Avenue, Fort Wayne, Indiana 46803, County of Allen.

12. On said date, as Tyler was working, an explosion of high-pressure slurry occurred and highly pressurized slurry, as well as possibly piping and/or piping fragments, forcefully struck Tyler resulting in catastrophic injuries to his person that have rendered him totally incapacitated, both physically and mentally.

IV.
COUNT I
TYLER TOMPKINS' GENERAL NEGLIGENCE CLAIMS AGAINST
HERRENKNECT TUNNELLING SYSTEMS USA, INC.
AND SHAMBAUGH & SON, L.P.

13. Plaintiffs restate paragraphs 1-12 of Parts I, II and III of Plaintiffs' Complaint as though fully set forth herein as paragraph 13 of Part IV, Count I, of Plaintiffs' Complaint.

14. On or before the incident of April 16, 2020, the Defendants designed, produced, manufactured, programmed, distributed, sold, built, assembled, installed, maintained, tested and/or otherwise placed in the stream of commerce the Tunnel Boring Machine (hereinafter "TBM") and its related component parts and systems, including but not limited to all piping, plumbing, valves,

electrical systems, and the Programmable Logic Controller (hereinafter “PLC”), to be used for the tunneling operations of Fort Wayne’s Deep Rock Tunnel Project.

15. As outlined *supra*, on April 16, 2020, an explosion of high-pressure slurry occurred and highly pressurized slurry, as well as possibly piping and/or piping fragments, forcefully struck Tyler resulting in catastrophic injuries to his person that have rendered him totally incapacitated.

16. The Defendants, Herrenknecht and Shambaugh, owed Tyler a *duty* to design, manufacture, assemble, install, test, build, produce, program, and maintain the subject TBM and its related component parts and systems, including but not limited to, the piping, plumbing, electrical components, valves and PLC of the subject tunneling system, in accordance with industry standards and other regulations and laws designed to protect end users of the tunneling equipment and/or persons that come into contact with or are near said equipment, including Tyler, from injury during the expected operation, use, and/or maintenance of the TBM and its related equipment, systems, and component parts, which duties include but are not limited to the following:

- (a) A duty to protect users and/or persons working the tunneling operations, including Tyler, from the dangers associated with the use of the subject TBM and its related equipment, component parts and systems, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC.
- (b) A duty to keep the subject TBM and its related equipment, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC safe for the end users and persons, including Tyler, working the tunneling operations and/or coming into contact with said equipment and/or systems.
- (c) A duty to eliminate by design hazards in the subject TBM and its related equipment, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC.
- (d) A duty to design, manufacture, install, test, assemble, build, program and maintain the subject TBM and its related equipment, component parts, and systems, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC so as to prevent injury to the end users and persons working the tunneling operations and/or coming into contact with said equipment and/or systems.

- (e) A duty to warn of the dangers of the subject TBM and its related equipment, component parts and systems, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC.
- (f) A duty to provide proper installation and testing of the TBM and its related equipment, component parts, and systems, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC.
- (g) A duty to provide proper instruction and warnings regarding installation, testing, use, and maintenance of the TBM and its related equipment, component parts, and systems, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC.
- (h) A duty to guard the user and/or persons, including Tyler, coming into contact with the TBM and its related equipment, component parts, and systems, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC, from hazards associated with the tunneling system operation, use and maintenance.
- (i) A duty to ensure that all safety devices of the subject TBM and its related equipment, component parts and systems, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC are in proper working order and functioning in the manner the safety systems were designed to function.
- (j) A duty to ensure that Defendants' employees or persons contracted to assemble, install, test, build, design, program, and maintain the subject TBM and its related equipment, component parts and systems, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC were properly trained and had the wherewithal to ensure that said equipment and systems were properly set up in compliance with the manufacturers' express instructions and warnings and in accordance with industry standards, laws and regulations.
- (k) A duty to design out foreseeable dangers associated with the subject TBM and its related equipment, component parts and systems, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC.
- (l) A duty to design out and/or guard against foreseeable misuse of subject TBM and its related equipment, component parts and systems, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC.
- (m) A duty to properly design, build, manufacture, install, test, program and maintain the PLC to ensure safe operation of the TBM and its related equipment, component parts and systems, including but not limited to the piping, plumbing, valve systems, and electrical components, to protect Tyler and people working the tunneling operations.

17. The Defendants, Herrenknecht and Shambaugh, *breached* the foregoing duties and were *negligent*, including but not limited to the following ways, with respect to the design, manufacture, assembly, installation, testing, building, production, programming and maintenance of the subject TBM and its related equipment, component parts and systems, including but not limited to the piping, plumbing, electrical components, valves and PLC of the subject tunneling system:

- (a) The plumbing, piping, valves, and/or PLC were defective and unreasonably dangerous.
- (b) The design of the plumbing, piping, valve systems, electrical systems, and/or PLC, including the programming of the PLC, failed to properly isolate energy sources during maintenance operations.
- (c) The defective design of the PLC, plumbing, valve systems, electrical systems, and/or piping systems allowed for critical safety features to be bypassed, the act of which posed an unreasonable risk of harm to persons working the tunneling operation, including Tyler, which was foreseeable to said Defendants, and for which said Defendants should have protected and warned against.
- (d) The PLC was defective and improperly designed, programmed, installed, tested, and/or maintained by said Defendants.
- (e) The PLC programming was defective and unreasonably dangerous because energy sources were not isolated when the slurry system was shut down to perform routine maintenance or otherwise.
- (f) Defendants failed to provide proper warnings and instructions regarding safe operation of the TBM and its related equipment and systems, including but not limited to the piping, plumbing, valve systems, electrical systems, PLC, and related safety systems.
- (g) Defendants failed to provide proper warnings regarding the risk of high-pressure slurry and the manner in which to safely remedy such problem to avoid serious injury and/or death.
- (h) Defendants failed to design, manufacture, build, install, test and/or program the TBM and its related equipment and systems, including but not limited to the piping, plumbing, valve systems, electrical components, and/or PLC to withstand pressure without causing an explosion of high-pressure slurry.
- (i) Defendants were negligent in the design, manufacturing, installation, testing, assembly, construction, programming, and/or maintenance of the TBM and its

related equipment and systems, including but not limited to the piping, plumbing, valve systems, electrical components, and/or PLC.

- (j) Defendants failed to design, build, manufacture, install, test, assemble, equip and program the TBM and its related equipment and systems, including but not limited to the piping, plumbing, valve systems, electrical components, and/or PLC, with proper guarding and safety mechanisms.
- (k) Defendants failed to adhere to industry standards and other regulations and laws with respect to the design, manufacturing, assembly, programming and maintenance of the TBM and its related equipment and systems, including but not limited to the piping, plumbing, valve systems, electrical components, and/or PLC.
- (l) Defendants designed, manufactured, assembled, programmed, marketed, sold, maintained and/or otherwise placed in the stream of commerce the TBM and its related equipment and systems, including but not limited to the piping, plumbing, valve systems, electrical components, and/or PLC in a condition that was defective and unreasonably dangerous.
- (m) Defendants could have manufactured, designed, built, constructed, assembled, installed, tested, programmed and/or maintained the TBM and its related equipment, component parts and systems in such a way to prevent injuries, including the mechanism of injury that Tyler sustained, but negligently failed to do so.

18. As a *direct and proximate cause of the breach* of the duties owed to Tyler *and* resulting *negligent acts and omissions* as outlined *supra*, Tyler suffered permanent and catastrophic injuries to his person, including a severe traumatic brain injury, that have rendered him totally physically and mentally incapacitated and causing him to incur emergency medical, hospital, diagnostic, surgical, therapeutic, pharmaceutical, and other medical expenses; Tyler also suffered and will continue to suffer physical pain, mental suffering, terror, fright, humiliation, loss of enjoyment of life, permanent scarring and disfigurement; Tyler also incurred lost wages, loss of earning capacity, and loss of employment-related benefits; Tyler will incur ongoing and future medical expenses, ongoing and future long-term care expenses, and handicapped housing and related expenses; Tyler also suffered a loss of sexual relations, and other injuries and damages of a personal and pecuniary nature.

WHEREFORE, Tyler Tompkins through his legal guardian, Claire Tompkins, by counsel, Robert J. Boughter of **BOUGHTER SINAK, LLC** and Stephen M. Wagner and Timothy F. Devereux of **WAGNER REESE, LLP**, seeks judgment against the Defendants, Herrenknecht Tunnelling Systems USA, Inc. and Shambaugh & Son, L.P., individually, in an amount sufficient to compensate him for his injuries and damages, for the costs of this action, for pre-judgment interest, and all further relief deemed just and proper in the premises.

V.

COUNT II

**TYLER TOMPKINS' CLAIMS PURSUANT TO INDIANA PRODUCTS LIABILITY
ACT AGAINST HERRENKNECHT TUNNELLING SYSTEMS USA, INC.
AND SHAMBAUGH & SON, L.P.**

19. Plaintiffs restate paragraphs 1-18 of Parts I, II, III, and IV of Plaintiffs' Complaint as though fully set forth herein as paragraph 19 of Part V, Count II, of Plaintiffs' Complaint.

20. Herrenknecht and Shambaugh are "sellers" and/or "manufacturers" of the TBM and/or its related equipment, systems and component parts, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC within the meaning of those terms as defined by I.C. 34-6-2-136 and I.C. 34-6-2-77.

21. Tyler was a "consumer" or "user" of the TBM and its related equipment, systems, and component parts, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC, within the meaning of those terms as defined by I.C. 34-6-2-29 and I.C. 34-6-2-147.

22. The TBM and its related equipment, systems, and component parts, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC as described herein are "products" within the meaning of that term as defined by I.C. 34-6-2-114.

23. The TBM and its related equipment, systems, and component parts, including but not limited to the piping, plumbing, valve systems, electrical components and PLC, which were designed, manufactured, programmed, distributed, installed, tested, assembled, built and sold by Defendants as described herein were “unreasonably dangerous” as defined by I.C. 34-6-2-146 and I.C. 34-20-4-1.

24. Tyler suffered “physical harm” within the meaning of that term as defined by I.C. 34-6-2-105.

25. The TBM and its related equipment, systems, and component parts, including but not limited to the piping, plumbing, valve systems, electrical components and PLC, which were designed, manufactured, assembled, built, installed, tested, programmed, distributed, and sold by Defendants as described herein, are “defective products” as defined by I.C. 34-20-4-1 and I.C. 34-20-4-3.

26. The TBM and its related equipment, systems, and component parts, including but not limited to the piping, plumbing, valve systems, electrical components and PLC, which were designed, manufactured, assembled, built, installed, tested, programmed, distributed, and sold by Defendants as described herein, were expected to and did reach Tyler without substantial alteration in the condition in which it was sold or placed in the stream of commerce.

27. Tyler is in the class of persons that Defendants reasonably foresaw, or should have reasonably foreseen, as being subject to the harm caused by the defective condition of the subject TBM and its related equipment, systems, and component parts, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC.

28. Tyler did not know of the defective condition of the TBM and its related equipment, systems, and component parts, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC, and was not aware of the danger caused by the defective condition.

29. Tyler did not misuse the subject TBM or its related equipment, systems, and component parts, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC or, in the alternative, misuse of the subject TBM and its related equipment, systems, and component parts, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC by Tyler was reasonably foreseeable to Defendants.

30. Defendants, Herrenknecht and Shambaugh, are strictly liable in tort to Tyler pursuant to the Indiana Product Liability Act, I.C. 34-20-1-1. *et seq.*, because the subject TBM and its related equipment, systems, and component parts, including but not limited to the piping, plumbing, valve systems, electrical components, and PLC were conveyed to another party in a condition:

- (a) Not contemplated by reasonable expected users or consumers of the product; and
- (b) Unreasonably dangerous to the expected user or consumer when used in reasonably expected ways of handling or consumption.

31. As a direct and proximate result of Defendants' actions and inactions described herein, Tyler suffered permanent and catastrophic injuries to his person, including a severe traumatic brain injury, that have rendered him totally physically and mentally incapacitated and causing him to incur emergency medical, hospital, diagnostic, surgical, therapeutic, pharmaceutical, and other medical expenses; Tyler also suffered and will continue to suffer physical pain, mental suffering, terror, fright, humiliation, loss of enjoyment of life, permanent scarring and disfigurement; Tyler also incurred lost wages, loss of earning capacity, and loss of employment-related benefits; Tyler will incur ongoing and future medical expenses, ongoing and future long-term care expenses, and handicapped housing and related expenses; Tyler also suffered a loss of sexual relations, and other injuries and damages of a personal and pecuniary nature.

WHEREFORE, Tyler Tompkins through his legal guardian, Claire Tompkins, by counsel, Robert J. Boughter of **BOUGHTER SINAK, LLC** and Stephen M. Wagner and Timothy F. Devereux

of **WAGNER REESE, LLP**, seeks judgment against the Defendants, Herrenknecht Tunnelling Systems USA, Inc. and Shambaugh & Son, L.P., individually, in an amount sufficient to compensate him for his injuries and damages, for the costs of this action, for pre-judgment interest, and all further relief deemed just and proper in the premises.

VI.
COUNT III
CLAIRE TOMPKINS' LOSS OF CONSORTIUM CLAIM AGAINST
HERRENKNECT TUNNELLING SYSTEMS USA, INC.
AND SHAMBAUGH & SON, L.P.

32. Plaintiffs restates paragraphs 1-31 of Parts I, II, III, IV, and V of Plaintiffs' Complaint as though fully set forth herein as paragraph 32 of Part VI, Count III, of Plaintiffs' Complaint.

33. At all relevant times herein, including on and before April 16, 2020, Tyler and Claire were husband and wife.

34. As a direct and proximate result of the catastrophic injuries Tyler has suffered, occasioned by the Defendants' negligence and strict liability as outlined *supra* under Parts III, IV and V of Plaintiffs' Complaint, Tyler is no longer able to provide the love, care and affection he ably provided to Claire prior to the subject incident of April 16, 2020. Likewise, Claire asserts a derivative claim for loss of consortium against Herrenknecht and Shambaugh and seeks all damages she is afforded under Indiana law.

WHEREFORE, Claire Tompkins, by counsel, Robert J. Boughter of **BOUGHTER SINAK, LLC** and Stephen M. Wagner and Timothy F. Devereux of **WAGNER REESE, LLP**, seeks judgment against the Defendants, Herrenknecht Tunnelling Systems USA, Inc. and Shambaugh & Son, L.P., individually, in an amount sufficient to compensate her for her loss of consortium and all other damages afforded to her under Indiana law, for the costs of this action, for pre-judgment interest, and all further relief deemed just and proper in the premises.

Respectfully submitted:

BOUGHTER SINAK, LLC



Robert J. Boughter, #23512-53
5150 West Jefferson Boulevard
Fort Wayne, IN 46804
Tel: 260-420-4878
Fax: 260-420-0600
E-mail: robert@boughtersinak.com
Attorney for Plaintiffs

&

WAGNER REESE, LLP

/s/ Stephen M. Wagner

Stephen M. Wagner, #18248-49
Timothy F. Devereux, #25250-49
11939 North Meridian Street
Carmel, Indiana 46032
Tel: 317-569-0000
Fax: 317-569-8088
E-mail: swagner@injuryattorneys.com
E-mail: tdevereux@wagnerreese.com
Attorneys for Plaintiffs

JURY DEMAND

Come now the Plaintiffs, by counsel, and demand trial by jury against all Defendants on all issues set forth in this cause of action.

Respectfully submitted:

BOUGHTER SINAK, LLC



Robert J. Boughter, #23512-53
5150 West Jefferson Boulevard
Fort Wayne, IN 46804
Tel: 260-420-4878
Fax: 260-420-0600
E-mail: robert@boughtersinak.com
Attorney for Plaintiffs

&

WAGNER REESE, LLP

/s/ Stephen M. Wagner

Stephen M. Wagner, #18248-49
Timothy F. Devereux, #25250-49
11939 North Meridian Street
Carmel, Indiana 46032
Tel: 317-569-0000
Fax: 317-569-8088
E-mail: swagner@injuryattorneys.com
E-mail: tdevereux@wagnerreese.com
Attorneys for Plaintiffs