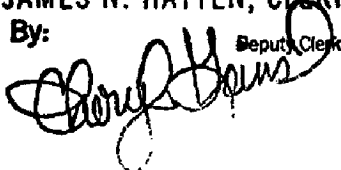


IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JUN - 2 2008

JAMES N. HATTEN, CLERK
By:  Deputy Clerk

ALLSTATE INSURANCE)
COMPANY,)
)
Plaintiff,)
)
v.)
)
TOSHIBA AMERICA)
INFORMATION SYSTEMS, INC.)
and SONY ELECTRONICS, INC.,)
)
Defendants.)

Civil Action File No:

1:08-CV-1928

COMPLAINT

BBM

Plaintiff, Allstate Insurance Company, ("Allstate"), by and through counsel,
hereby file the instant Complaint, showing as follows:

PARTIES AND JURISDICTION

1.

Plaintiff Allstate is an Illinois corporation with its principal place of business
in Northbrook, Illinois.

2.

Upon information and belief, Defendant Toshiba America Information
Systems, Inc. ("Toshiba") is a California corporation with its principal place of
business in Irvine, California. Defendant Toshiba may be served with process
through its registered agent CT Corporation System located at 1201 Peachtree
Street, NE, Atlanta, GA 30361.

3.

Upon information and belief, Sony Electronics, Inc. (“Sony”) is a Delaware Corporation with its principal place of business in San Diego, California. Defendant Sony may be served with process through its registered agent Corporation Service Company located at 40 Technology Parkway South, #300, Norcross, GA 30092.

4.

Plaintiff shows that the matter in controversy exceeds \$75,000, exclusive of interests and costs, and that complete diversity of jurisdiction exists, as this case is wholly between citizens of different states. Accordingly, this court has original jurisdiction pursuant to 28 U.S.C. §1332.

5.

Venue is proper as the loss occurred within the judicial district of this court.

GENERAL ALLEGATIONS

6.

Edward Brown (“Brown”) had an insurable interest in the property damaged by Defendants and was insured by Plaintiff Allstate under a policy of insurance (“Policy”) in effect at all times relevant to this Complaint. The terms of the Policy obligated Allstate to indemnify its insured against losses sustained to the property at issue and Allstate is properly subrogated to the rights of its insured.

7.

At all relevant times, Brown resided at 311 Woodbrook Lane, Marietta, Georgia.

8.

This action stems from a December 25, 2006 fire at the Brown home involving a Toshiba laptop computer.

9.

Following the December 25, 2006 fire, Brown submitted a claim to Allstate seeking indemnification and reimbursement for the fire related property damage. Allstate has since paid Brown \$257,924.94 for fire related damages.

FACTUAL ALLEGATIONS

10.

On or about May 2006, Brown received a Toshiba laptop computer containing a lithium ion battery.

11.

Upon information and belief, Toshiba designed, manufactured, tested, inspected, and distributed the laptop computer.

12.

Upon information and belief, Sony designed, manufactured, tested, inspected, and distributed the lithium ion battery.

13.

At all relevant times, Brown used the Toshiba laptop computer for the customary, normal, and foreseeable use of providing personal computer services.

14.

On December 25, 2006, a fire ignited in the living room of the Brown home.

15.

The fire originated at the Toshiba laptop computer.

16.

Upon information and belief, the fire was caused by a defect within the lithium ion battery distributed with and contained within the Toshiba laptop computer.

17.

The fire damaged the Brown home, its contents, and proximately caused expenses related to repair of the structure, replacement and/or repair of its contents, and additional living expenses.

COUNT I:
NEGLIGENCE AGAINST DEFENDANT TOSHIBA

18.

Allstate incorporates paragraphs 1 through 17 as fully set forth herein.

19.

At all times relevant, Toshiba was under a duty to exercise reasonable care for the safety of Brown's real and personal property.

20.

Toshiba, and its agents or employees, breached its duty of care by committing one or more of the following acts or omissions:

- a. Defectively designed the Toshiba laptop computer and/or its component parts, including the lithium ion battery;
- b. Defectively manufactured the Toshiba laptop computer and/or its component parts, including the lithium ion battery;
- c. Failed to properly inspect the Toshiba laptop computer and/or its component parts, including the lithium ion battery;
- d. Failed to properly test the Toshiba laptop computer and/or its component parts, including the lithium ion battery;
- e. Failed to warn of defects or dangers of the Toshiba laptop computer and/or its component parts, including the lithium ion battery;
- f. Was otherwise negligent or careless.

21.

As a direct and proximate result of Toshiba's negligence, Allstate suffered damages including costs of repair, contents replacement, and associated living expenses in the amount of \$257,924.94.

COUNT II:
PRODUCT LIABILITY AGAINST DEFENDANT TOSHIBA

22.

Allstate incorporates the allegations set forth in paragraphs 1 through 21 as fully set forth herein.

23.

The Toshiba laptop computer, its parts and components, including the lithium ion battery, designed, manufactured, inspected, tested, and distributed by Toshiba was offered for sale to the general public and consumers, including Brown.

24.

The Toshiba laptop computer, its parts and components, including the lithium ion battery, was expected to reach the general public and consumers, including Brown, in the condition in which it was designed, manufactured, tested, and distributed.

25.

The Toshiba laptop computer its parts and components, including the lithium ion battery, was purchased and used for its intended purpose, in the condition in which it was manufactured and distributed by Toshiba.

26.

The Toshiba laptop computer, its parts and components, including the lithium ion battery, were unreasonably dangerous and defective in light of its foreseeable and intended use at the time in which it left the control of Toshiba in one or more of the following ways:

- a. it was defectively designed;
- b. it was defectively manufactured;
- c. it was improperly inspected;
- d. it was improperly tested;
- e. it lacked adequate warning labels.

27.

Toshiba failed to warn foreseeable users, including Brown, of the defective and unreasonably dangerous condition of the Toshiba laptop and its component parts, including the lithium ion battery, as well as the dangers related to improper design, improper manufacturing, and the risks generated through the normal and intended use of the Toshiba laptop computer and its component parts, including the lithium ion battery.

28.

As a direct and proximate result of Toshiba's failure to warn of the defective and unreasonably dangerous condition of the Toshiba laptop computer and its component parts, including the lithium ion battery, Allstate suffered damages

including, costs of repair, contents replacement, and associated living expenses in the amount of \$257,924.94.

**COUNT III:
NEGLIGENCE AGAINST DEFENDANT SONY**

29.

Allstate incorporates the allegations set forth in paragraphs 1 through 28 as fully set forth herein.

30.

At all times relevant, Sony was under a duty to exercise reasonable care for the safety of Brown's real and personal property.

31.

Sony, and its agents or employees, breached its duty of care by committing one or more of the following acts or omissions:

- a. Defectively designed the lithium ion battery;
- b. Defectively manufactured the lithium ion battery;
- c. Failed to properly inspect the lithium ion battery;
- d. Failed to properly test the lithium ion battery;
- e. Failed to warn of defects or dangers of the lithium ion battery; and
- f. Was otherwise negligent or careless.

32.

As a direct and proximate result of Sony's negligence, Allstate suffered damages including costs of repair, contents replacement, and associated living expenses in the amount of \$257,924.94.

COUNT IV:
PRODUCT LIABILITY AGAINST DEFENDANT SONY

33.

Allstate incorporates the allegations set forth in paragraphs 1 through 32 as fully set forth herein.

34.

The lithium ion battery, designed, manufactured, inspected, tested, and distributed by Sony, was offered for sale to the general public and consumers, including Brown.

35.

The lithium ion battery was expected to reach the general public and consumers, including Brown, in the condition in which it was designed, manufactured, tested, and distributed.

36.

The lithium ion battery was purchased and used for its intended purpose, in the condition in which it was manufactured and distributed by Sony.

37.

The lithium ion batter was unreasonably dangerous and defective in light of its foreseeable and intended use when it left the control of Sony in one or more of the following ways:

- a. it was defectively designed
- b. it was defectively manufactured;
- c. it was improperly inspected;
- d. it was improperly tested;
- e. it lacked adequate warning labels.

38.

Sony failed to warn foreseeable users, including Brown, of the defective and unreasonably dangerous condition of the lithium ion battery, as well as dangers related to improper design, improper manufacturing, and the risks generated through normal and intended use of the lithium ion battery.

39.

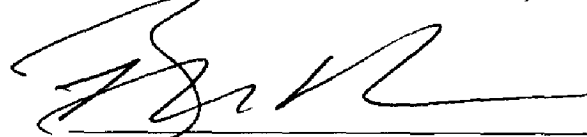
As a direct and proximate result of Sony's failure to warn of the defective and unreasonably dangerous condition of the lithium ion battery, Allstate suffered damages including, costs of repair, contents replacement, and associated living expenses in the amount of \$257,924.94.

WHEREFORE Plaintiff demands:

- A. Trial by jury;
- B. Judgment against Defendant Toshiba for an amount to be determined at trial, but no less than \$257,924.94;
- C. Judgment against Defendant Sony for an amount to be determined at trial, but no less than \$257,924.94;
- D. Pre-judgment interest, attorney's fees, court costs; and
- E. Any and all other relief this Court deems appropriate.

Respectfully submitted,

DREW ECKL & FARNHAM, LLP



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Counsel for Plaintiff certifies that this pleading complies with Local Rule 7.1D.