

Beth S. Rose
Vincent Lodato
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One Riverfront Plaza
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*Attorneys for Defendant
Amazon.com, Inc.*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**ALL STATE NEW JERSEY INSURANCE)
COMPANY, as subrogee of KATHLEEN) Civil Action No: _____
CANCEL,)
)
Plaintiff,)
)
v.)
)
AMAZON.COM, INC.,)
)
Defendant.)**

NOTICE OF REMOVAL

Defendant Amazon.com, Inc. gives notice of the removal of this civil action from the New Jersey Superior Court, Monmouth County, Law Division, to the United States District Court for the District of New Jersey, Trenton Vicinage pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. Diversity jurisdiction exists because there is complete diversity of citizenship and the amount in controversy exceeds \$75,000.

I. INTRODUCTION

This lawsuit involves a house fire that was allegedly caused by a laptop computer battery purchased on Amazon.com and sold by Lenoge Technology (HK) Limited doing business as E-Life. On March 8, 2017, Plaintiff filed this civil action captioned *Allstate New Jersey Insurance Company a/s/o Kathleen Cancel v. Amazon.com, Inc.*, Docket No. MON-L-931-17 (“State Court

Action”) in the New Jersey Superior Court, Monmouth County, Law Division. Plaintiff served the Summons and Complaint on Amazon.com, Inc. through its registered agent on March 23, 2017. True and correct copies of the Summons, Complaint and Notice of Service of Process are attached as Exhibit A.

II. THIS CASE IS REMOVABLE UNDER DIVERSITY JURISDICTION

This action is removable under 28 U.S.C. § 1441 because this Court would have had original jurisdiction under 28 U.S.C. § 1332 had Plaintiff filed this action initially in federal court. Plaintiff and Amazon.com, Inc. are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

A. Complete diversity exists

The parties to this action are corporations. A corporation is a citizen of its state of incorporation and of the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1). Plaintiff Allstate New Jersey Insurance Company is a corporation organized under the laws of Illinois with its principal place of business in Northbrook, Illinois. (Compl. ¶ 1). Defendant Amazon.com, Inc. is a corporation organized under the laws Delaware with its principal place of business in Seattle, Washington. (Compl. ¶ 2). Because Kathleen Cancel is Plaintiff’s subrogor, her citizenship is ignored for purposes of determining whether diversity exists. *See Certain Underwriters at Lloyd’s v. U-Line Corp.*, Civ. Act. No. 13-3203, 2013 U.S. Dist. LEXIS 147712, at *3 n.1 (D.N.J. Oct. 1, 2013) (citizenship of subrogors not considered for purposes of diversity jurisdiction); *Fidelity and Guar. Ins. Underwriters, Inc. v. Omega Flex, Inc.*, 936 F. Supp. 2d 441, 444 n.1 (D.N.J. 2013) (*citing Fallat v. Gouran*, 220 F.2d 325, 326 (3d Cir. 1955)) (same). Because Plaintiff Allstate New Jersey Insurance Company and Defendant Amazon.com, Inc. are citizens of different states, complete diversity exists.

B. The amount in controversy exceeds \$75,000

The Complaint alleges that the laptop computer battery at issue overheated and ignited causing a fire that resulted in extensive damage to Ms. Kathleen Cancel’s home and the contents

within it. (Compl. ¶ 26). Counsel for Plaintiff has asserted in communications with Defendant's counsel that the property damage the fire allegedly caused exceeds \$75,000 in value. Because the amount in controversy exceeds \$75,000, removal is appropriate.

III. SERVICE OF COMPLAINT

Amazon.com, Inc. was served with a copy of the Summons and the Complaint on March 23, 2017. Therefore, this Notice of Removal is timely under 28 U.S.C. § 1446(b).

IV. VENUE OF REMOVED ACTION

The United States District Court for the District of New Jersey, Trenton Vicinage is the United States District Court and vicinage embracing the New Jersey Superior Court, Monmouth County where this action was filed and is pending. Therefore, venue is proper in the United States District Court for the District of New Jersey, Trenton Vicinage under 28 U.S.C. § 1441(a).

V. NOTICE TO THE STATE COURT

A copy of this Notice of Removal is being contemporaneously served on all parties and filed with the New Jersey Superior Court, Monmouth County, Law Division, where this case was originally filed and is currently pending.

VI. PLEADINGS IN THE STATE COURT ACTION

All process, pleadings, and orders served upon Amazon.com, Inc. in this action are attached as Exhibit A.

WHEREFORE, Defendant Amazon.com, Inc. respectfully requests that this action be removed to the United States District Court for the District of New Jersey, Trenton Vicinage and that no further proceedings be held in the New Jersey Superior Court, Monmouth County, Law Division.

Dated: April 21, 2017

Respectfully submitted,

s/ Beth S. Rose

Beth S. Rose

Vincent Lodato

SILLS CUMMIS & GROSS P.C.

One Riverfront Plaza

Newark, NJ 07102

Telephone: (973)643-7000

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brose@sillscummis.com

vlodato@sillscummis.com

Attorneys for Defendant Amazon.com, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2017, I caused a copy of Defendant's Notice of Removal to be served via first class mail on the following counsel for Plaintiff:

Christopher Konzelmann, Esq.
White and Williams LLP
Liberty View
457 Haddonfield Road
Suite 400
Cherry Hill, NJ 08002-2220

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

s/ Beth S. Rose
BETH S. ROSE

Dated: April 21, 2017

EXHIBIT A



CORPORATION SERVICE COMPANY®

Notice of Service of Process

TRL / ALL
Transmittal Number: 16412108
Date Processed: 03/23/2017

Primary Contact: Ms. Lynn Radliff
Amazon.Com, Inc.
P.O. Box 81226
Seattle, WA 98108-1226

Electronic copy provided to: Dung Phan
Maria Catana
Joell Parks
Jesse Jensen
Elizabeth Hernandez
Lorraine Colby
Annamaria Taskai
Lizette Fernandez
Karen Curtis
Gianmarco Vairo
Katie Loughnane
Tammy Malley-Naslund

Entity: Amazon.Com, Inc.
Entity ID Number 1662773

Entity Served: Amazon.com, Inc.

Title of Action: Allstate New Jersey Insurance Company as Subrogee of Kathleen Cancel vs. Amazon.Com, Inc

Document(s) Type: Summons/Complaint

Nature of Action: Product Liability

Court/Agency: Monmouth County Superior Court, New Jersey

Case/Reference No: L-931-17

Jurisdiction Served: Washington

Date Served on CSC: 03/23/2017

Answer or Appearance Due: 35 Days

Originally Served On: CSC

How Served: Personal Service

Sender Information: Christopher Konzelmann
856-317-3600

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscglobal.com

WHITE AND WILLIAMS LLP

BY: Christopher Konzelmann
Identification No(s). 027971990
LibertyView | 457 Haddonfield Road, Suite 400 |
Cherry Hill, NJ 08002-2220
856.317.3600
Attorneys for Plaintiff,
Zurich American Insurance Company

ALLSTATE NEW JERSEY INSURANCE COMPANY as subrogee of KATHLEEN CANCEL	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION - MONMOUTH
	:	COUNTY
Plaintiff,	:	DOCKET NO.: L-931-17
v.	:	CIVIL ACTION
<u>AMAZON.COM, INC</u>	:	SUMMONS
Defendant.	:	

From The State of New Jersey To The Defendant Named Above:

AMAZON.COM, INC.

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you receive it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Clerk of the Superior Court and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$135.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford to pay an attorney, you may call the Legal Services Office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the lawyer referral services. A list of these offices is provided.

Dated: March 20, 2017

//s// Michelle M. Smith

Michelle M. Smith, Clerk of the Superior
Court

Name of Defendant to be served: Amazon.com, Inc.

Address of Defendant to be served: 1200 Twelfth Avenue South
Seattle, Washington 98144

Directory of Superior Court Deputy Clerk's Offices County Lawyer Referral and Legal Services Offices

ATLANTIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., First Fl.
Atlantic City, NJ 08401

LAWYER REFERRAL: (609) 345-3444
LEGAL SERVICES: (609) 348-4200

BERGEN COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Room 115
Justice Center, 10 Main St.
Hackensack, NJ 07601

LAWYER REFERRAL: (201) 488-0044
LEGAL SERVICES: (201) 487-2166

BURLINGTON COUNTY:

Deputy Clerk of the Superior Court
Central Processing Office
Attn: Judicial Intake
First Fl., Courts Facility
49 Rancocas Rd.
Mt. Holly, NJ 08060

LAWYER REFERRAL: (609) 261-4862
LEGAL SERVICES: (800) 496-4570

CAMDEN COUNTY:

Deputy Clerk of the Superior Court
Civil Processing Office
Hall of Justice
1st Fl., Suite 150
101 South 5th Street
Camden, NJ 08103

LAWYER REFERRAL: (856) 964-4520
LEGAL SERVICES: (856) 964-2010

CAPE MAY COUNTY:

Deputy Clerk of the Superior Court
9 N. Main Street
Cape May Court House, NJ 08210

LAWYER REFERRAL: (609) 463-0313
LEGAL SERVICES: (609) 465-3001

CUMBERLAND COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
60 West Broad Street
P.O. Box 10
Bridgeton, NJ 08302

LAWYER REFERRAL: (856) 696-5550
LEGAL SERVICES: (856) 691-0494

ESSEX COUNTY:

Deputy Clerk of the Superior Court
Civil Customer Service
Hall of Records, Room 201
465 Dr. Martin Luther King Jr. Blvd.
Newark, NJ 07102

LAWYER REFERRAL: (973) 622-6204
LEGAL SERVICES: (973) 624-4500

GLOUCESTER COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
Attn: Intake
First Fl., Court House
1 North Broad Street
Woodbury, NJ 08096

LAWYER REFERRAL (856) 848-4589
LEGAL SERVICES (856) 848-5360

HUDSON COUNTY:

Deputy Clerk of the Superior Court
Superior Court, Civil Records Dept.
Brennan Court House--1st Floor
583 Newark Ave.
Jersey City, NJ 07306

LAWYER REFERRAL (201) 798-2727
LEGAL SERVICES (201) 792-6363

HUNTERDON COUNTY:

Deputy Clerk of the Superior Court
Civil Division
65 Park Avenue
Flemington, NJ 08822

LAWYER REFERRAL (908) 735-2611
LEGAL SERVICES (908) 782-7979

MERCER COUNTY:

Deputy Clerk of the Superior Court
Local Filing Office, Courthouse
175 S. Broad Street, P.O. Box 8068
Trenton, NJ 08650

LAWYER REFERRAL (609) 585-6200
LEGAL SERVICES (609) 695-6249

MIDDLESEX COUNTY:

Deputy Clerk of the Superior Court,
Middlesex Vicinage
2nd Floor - Tower
56 Paterson Street, P.O. Box 2633
New Brunswick, NJ 08903-2633

LAWYER REFERRAL (732) 828-0053
LEGAL SERVICES (732) 249-7600

MONMOUTH COUNTY:

Deputy Clerk of the Superior Court
Court House
P.O. Box 1269
Freehold, NJ 07728-1269

LAWYER REFERRAL (732) 431-5544
LEGAL SERVICES (732) 866-0020

MORRIS COUNTY:

Morris County Courthouse
Civil Division
Washington and Court Streets
P. O. Box 910
Morristown, NJ 07963-0910

LAWYER REFERRAL (973) 267-5882
LEGAL SERVICES (973) 285-6911

OCEAN COUNTY:

Deputy Clerk of the Superior Court
118 Washington Street, Room 121
P.O. Box 2191
Toms River, NJ 08754-2191

LAWYER REFERRAL (732) 240-3666
LEGAL SERVICES (732) 341-2727

PASSAIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division
Court House
77 Hamilton Street
Paterson, NJ 07505

LAWYER REFERRAL (973) 278-9223
LEGAL SERVICES (973) 523-2900

SALEM COUNTY:

Deputy Clerk of the Superior Court
Attn: Civil Case Management Office
92 Market Street
Salem, NJ 08079

LAWYER REFERRAL (856) 935-5629
LEGAL SERVICES (856) 451-0003

SOMERSET COUNTY:

Deputy Clerk of the Superior Court
Civil Division
P.O. Box 3000
40 North Bridge Street
Somerville, N.J. 08876

LAWYER REFERRAL (908) 685-2323
LEGAL SERVICES (908) 231-0840

SUSSEX COUNTY:

Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860

LAWYER REFERRAL (973) 267-5882
LEGAL SERVICES (973) 383-7400

UNION COUNTY:

Deputy Clerk of the Superior Court
1st Fl., Court House
2 Broad Street
Elizabeth, NJ 07207-6073

LAWYER REFERRAL (908) 353-4715
LEGAL SERVICES (908) 354-4340

WARREN COUNTY:

Deputy Clerk of the Superior Court
Civil Division Office
Court House
413 Second Street
Belvidere, NJ 07823-1500

LAWYER REFERRAL (973) 267-5882
LEGAL SERVICES (908) 475-2010

MONMOUTH COUNTY
SUPERIOR COURT
PO BOX 1269
FREEHOLD NJ 07728

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (732) 677-4240
COURT HOURS 8:30 AM - 4:30 PM

DATE: MARCH 10, 2017
RE: ALLSTATE NEW JERSEY INS CO VS AMAZON COM INC
DOCKET: MON L -000931 17

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 2.

DISCOVERY IS 300 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON OWEN C. MCCARTHY

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 003
AT: (732) 677-4262 EXT 4262.



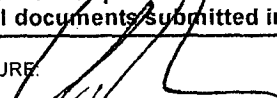
IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE
WITH R.4:5A-2.

ATTENTION:

ATT: CHRISTOPH KONZELMANN
LP WHITE AND WILLIAMS L
1650 MARKET ST
ONE LIBERTY PLACE STE 1800
PHILADELPHIA PA 19103-7395

JUNMAL2

Appendix XII-B1

 <p style="text-align: center;">CIVIL CASE INFORMATION STATEMENT (CIS)</p> <p style="text-align: center;">Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed</p>		FOR USE BY CLERK'S OFFICE ONLY	
		PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA	CHG/CK NO.
ATTORNEY / PRO SE NAME Christopher Konzelmann, Esquire		TELEPHONE NUMBER 215-864-6334	COUNTY OF VENUE Monmouth
FIRM NAME (if applicable) WHITE AND WILLIAMS LLP		DOCKET NUMBER (when available) L-931-17	
OFFICE ADDRESS LibertyView 457 Haddonfield Road, Suite 400 Cherry Hill, New Jersey 08002-2220		DOCUMENT TYPE Complaint	
NAME OF PARTY (e.g. John Doe, Plaintiff) Allstate New Jersey Insurance Company as subrogee of Kathleen Cancel		CAPTION Allstate New Jersey Insurance Company as subrogee of Kathleen Cancel vs. Amazon.com, Inc.	
CASE TYPE NUMBER (See reverse side for listing) 699	HURRICANE SANDY RELATED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.	
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, LIST DOCKET NUMBERS	
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN	
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.			
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION			
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS	
DOES THIS STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION			
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION	
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, FOR WHAT LANGUAGE?	
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .			
ATTORNEY SIGNATURE: 			

Side 2



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (Briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE – PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE – PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE – PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT – OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)

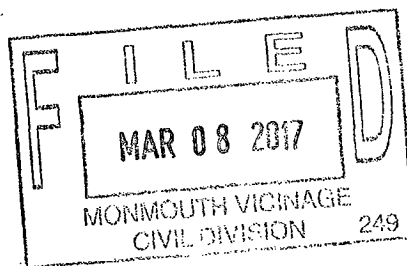
- | | |
|--|---|
| <ul style="list-style-type: none"> 271 ACCUTANE/ISOTRETINOIN 274 RISPERDAL/SEROQUEL/ZYPREXA 278 ZOMETA/AREZIA 279 GADOLINIUM 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL 282 FOSAMAX 285 STRYKER TRIDENT HIP IMPLANTS 286 LEVAQUIN 287 YAZ/YASMIN/OCELLA 288 PRUDENTIAL TORT LITIGATION | <ul style="list-style-type: none"> 289 REGLAN 290 POMPTON LAKES ENVIRONMENTAL LITIGATION 291 PELVIC MESH/GYNECARE 292 PELVIC MESH/BARD 293 DEPUY ASR HIP IMPLANT LITIGATION 295 ALLODERM REGENERATIVE TISSUE MATRIX 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS 297 MIRENA CONTRACEPTIVE DEVICE 601 ASBESTOS 623 PROPECIA |
|--|---|

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category

Putative Class Action

Title 59



WHITE AND WILLIAMS LLP

BY: Christopher Konzelmann
Identification No(s). 027971990
LibertyView | 457 Haddonfield Road, Suite 400 |
Cherry Hill, NJ 08002-2220
856.317.3600
konzelmannc@whiteandwilliams.com;
Attorneys for Plaintiff

ALLSTATE NEW JERSEY INSURANCE
COMPANY as subrogee of KATHLEEN
CANCEL

Plaintiff,

v.

AMAZON.COM, INC

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION - MONMOUTH
: COUNTY
: DOCKET NO.: L-931-17
: CIVIL ACTION

**COMPLAINT, JURY DEMAND, RULE 4:5-1 CERTIFICATION,
AND TRIAL COUNSEL DESIGNATION**

Plaintiff Allstate New Jersey Insurance Company as subrogee of Kathleen Cancel, by way of complaint against the defendant, avers as follows:

PARTIES

1. Plaintiff Allstate New Jersey Insurance Company as subrogee of Kathleen Cancel ("Allstate") is an Illinois corporation with a principal place of business located at 2775

LIMITED LIABILITY PARTNERSHIP REGISTERED IN PENNSYLVANIA

Sanders Road, Northbrook, Illinois. At all times relevant hereto, Allstate was duly authorized to issue contracts of insurance in the State of New Jersey.

2. Defendant Amazon.com, Inc. ("Amazon") is a corporation duly organized and existing under the laws of the State of Delaware, and upon information and belief, maintains its principal place of business at 1200 Twelfth Avenue South, Seattle, Washington.

FACTS

3. At all times material hereto, Amazon was an online retailer in the business of offering consumer products for sale through the Internet – through Amazon's website platform - including offering products such as computer batteries for sale to consumers in New Jersey.

4. Amazon sells products directly to consumers around the world through its interactive website.

5. Alternatively, Amazon sells consumer products from third-party vendors who sell their products through Amazon's interactive website.

6. Upon information and belief, Amazon charges third-party vendors a monthly fee to sell products through its website platform.

7. Upon information and belief, Amazon charges transaction-based fees to third-party vendors selling products through its website platform.

8. Amazon markets to and recruits third-party vendors based on purported customer confidence in the Amazon brand and represents to vendors that they can boost their product visibility on the Amazon website platform by using fee-based, keyword-targeted, advertising through a program that allows sellers to bid on keywords and choose from a variety of ad placements.

9. Upon information and belief, Amazon has third-party vendors sign service agreements and allows those vendors to sell products through its website platform.

10. Once a consumer purchases a third-party vendor product through Amazon, Amazon ships the product directly from one of its fulfillment centers, where Amazon maintains a supply of the third-party vendor's products.

11. Alternatively, once a consumer purchases a third-party vendor product through Amazon, the third-party vendor ships the product directly to the consumer.

12. When Amazon ships products through one of its fulfillment centers, Amazon determines the shipping charge.

13. Upon information and belief, Amazon has over 100 fulfillment centers around the world, including one located in Robbinsville, New Jersey and one located in Avenel, New Jersey.

14. Amazon processes purchaser payments and then, after deducting fees and/or commissions, disburses the remaining funds to the third-party vendor.

15. To insure that Amazon receives its fees and/or commissions, the company instructs purchasers that "[i]f a seller asks you to send funds directly to them, bypassing the Amazon checkout process, do not place the order and contact Amazon customer service immediately."

16. Amazon provides customer service for all products sold through its website platform.

17. For all products sold through its website, Amazon provides an A-Z Guarantee.

18. Pursuant to the A-Z Guarantee, Amazon warrants purchases from third-party vendors, including guaranteeing the condition of items purchased.

19. Amazon routinely does business over the internet with New Jersey consumers.

20. Through Amazon's use of nationwide marketing, branding, fulfillment centers, repeated shipments of products to New Jersey, and its knowledge that third-party vendors

intentionally use the company's established infrastructure to sell and ship products, Amazon has purposefully directed activities in New Jersey thereby subjecting the company to this court's jurisdiction.

21. Kathleen Cancel owns the home at 77 Academy Street, Farmingdale, New Jersey.

22. On July 31, 2016, Kathy Cancel purchased a new battery for her HP Pavilion laptop computer from Amazon, Order Number 116-5718141-7465003.

amazon.com

Final Details for Order # 116-5718141-7465003

Order Placed: July 31, 2016
 Amazon.com order number: 116-5718141-7465003
 Order Total: \$26.69

Shipped on August 1, 2016

Items Ordered	Price
1 of: New Laptop Battery for HP Pavilion G8-1A6505 G7-10950X G7-1000 9m4-r062w	\$12.29
Shipping & handling: \$0.00	
Total before tax: \$12.29	
Sales Tax: \$0.00	
Total for this Shipment: \$12.29	

Items Ordered	Price
1 of: Maxida Slim Pump Core Fan Blower and Therm Sucking, 0.3-Flux Output	\$14.40
Shipping & handling: \$0.00	
Total before tax: \$14.40	
Sales Tax: \$0.00	
Total for this Shipment: \$14.40	

Payment information

Payment Method:	Item(s) Subtotal: \$26.69
Via Last Digits: 1392	Shipping & Handling: \$0.00
Billing address:	Total before tax: \$26.69
Kathy Cancel	Estimated tax to be collected: \$0.00
77 Academy St.	Grand Total: \$26.69
Farmingdale, NJ 07727	
United States	

23. Upon information and belief, Amazon shipped the battery to the Cancel home from one of its fulfillment centers.

24. Amazon charged Cancel for the battery and Cancel paid for the battery using a credit card.

25. Upon information and belief, Cancel received the battery within two days of shipment.

26. On September 9, 2016, the battery overheated and ignited. The resulting fire caused extensive damage to the Cancel home and contents within.

27. Plaintiff Allstate insured the Cancel home.

28. Kathleen Cancel submitted a claim to Allstate seeking policy benefits. Allstate adjusted the claim and made significant payments to its insured.

29. Pursuant to the terms of the insurance policy, and the applicable law, Allstate is subrogated to Cancel's rights and claims against the third party responsible for causing the fire, defendant Amazon.

COUNT I

30. Plaintiff incorporates the allegations contained in the preceding paragraphs as if fully set forth herein.

31. Amazon, as a product seller, had a duty not to market, sell, ship, assemble, package, distribute, or be otherwise involved in placing a defective battery in the stream of commerce.

32. Amazon, in its status as a product seller under New Jersey's Product Liability Act, see N.J. Stat. § 2A:58C-8 - and not its status as an interactive computer service provider, see 47 U.S.C. § 230(c)(1) - in the course of its business conducted for that purpose, marketed,

sold, shipped, assembled, packaged, distributed and/or was otherwise involved in placing the defective battery in the stream of commerce.

33. Amazon, as a product seller who, among other things, provided its own guarantee as to the condition of the battery, had a duty to warn Cancel that the battery was in an unreasonably dangerous condition.

34. The battery shipped to Cancel was defective when it left Amazon because the product was not reasonably fit, suitable, or safe for its intended purpose, and the defect existed when the battery reached the Cancel home.

35. When the fire occurred, the battery was in substantially the same condition as when Cancel received the product.

36. Cancel was using the battery for its intended use.

37. Cancel did not know that the battery was defective.

38. Amazon knew or should have known that the battery was defective.

39. The battery's defective and unreasonably dangerous condition was a direct and proximate cause of the fire and resulting losses.

WHEREFORE, Plaintiff demands judgment against the defendant for damages together with interest, attorney fees, costs of suit, and such other relief deemed just and proper.

JURY DEMAND

Plaintiff respectfully requests a trial by jury as to all issues presented in this matter.

RULE 4:5-1 CERTIFICATION

Pursuant to Rule 4:5-1, I hereby certify that this matter is not the subject of any other action pending in any other court or of a pending arbitration proceeding.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Plaintiff designates Christopher Konzelmann, Esquire as trial counsel in this matter.

WHITE AND WILLIAMS LLP
Attorneys for Plaintiff,
Allstate New Jersey Insurance Company

BY: 
Christopher Konzelmann, Esquire

Dated: March 7, 2017