

**FILED**

JAN 17 2008

CLERK OF CIRCUIT COURT #6  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

**IN THE CIRCUIT COURT FOR THE THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS**

DEPOSITORS INSURANCE COMPANY (a )  
subsidiary of NATIONWIDE INSURANCE )  
as subrogee of MICHAEL and MELISSA UNGER, )

Plaintiff, )

v. )

HAMILTON BEACH/PROCTOR-SILEX, INC., )

Defendant. )

Case No.

08L37

**PLAINTIFF DEMANDS  
TRIAL BY JURY**

Serve:

Hamilton Beach/Proctor-Silex, Inc.  
Registered Agent: CT Corporation System  
208 S. LaSalle St., Ste. 814  
Chicago, IL 60604

**COMPLAINT**

NOW COMES the Plaintiff, DEPOSITORS INSURANCE COMPANY as subrogee of MICHAEL and MELISSA UNGER (hereinafter referred to as "Unger"), by and through its attorneys, Neville, Richards & Wuller, LLC and Sneckenberg, Thompson and Brody, LLC., and hereby brings this cause of action against the Defendant, HAMILTON BEACH, as follows:

**ALLEGATIONS COMMON TO ALL COUNTS**

1. At all times relevant, Michael and Melissa Unger owned and resided in their home at 12530 Tree Line Drive, Highland, Illinois 62249.
2. At all times relevant, the Plaintiff, Depositors Insurance, was an insurance company licensed to do business in Illinois, and to issue property and homeowners insurance policies to residents in Illinois, such as Michael and Melissa Unger.
3. Depositors Insurance does business and/or has offices located in Madison County, Illinois.

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4. At all times relevant, the Ungers purchased and maintained their Depositors homeowners insurance policy which provided coverage for the subject residence and its property and contents, and for Alternate Living Expenses, and this policy was in full force and effect on January 23, 2006, the date of this loss.

5. On January 23, 2006, a fire occurred which partially destroyed the Unger residence, including the property and contents of 12530 Tree Line Drive, Highland, Illinois 62249.

6. The subject fire originated at and within the subject Hamilton Beach/Proctor-Silex, Inc. (herein after referred to as "Hamilton Beach") toaster oven, which was located on the kitchen counter.

7. The subject fire was caused by the subject Hamilton Beach toaster oven, which was located on the kitchen counter.

8. The subject toaster oven was manufactured and placed into the stream of commerce by the Defendant, Hamilton Beach/Proctor-Silex, Inc.

9. At all times relevant, the Defendant, Hamilton Beach, distributed its product into the stream of commerce within Madison County, Illinois.

10. At all times relevant, the Defendant, Hamilton Beach, did business within Madison County, Illinois.

11. At all times relevant, the Defendant, Hamilton Beach, maintained headquarters at 4421 Waterfront Drive, Glen Allen, Virginia 23060, and maintained corporate offices at 234 Springs Road in Washington, North Carolina 27889.

12. Immediately prior to the fire, the subject toaster oven remained in the same condition as it was when placed into the stream of commerce and when purchased, and was not altered in any way or at any time prior to the fire then, other than for normal use.

13. As a result of the fire and its damages, the Ungers submitted a claim (under claim No. 91-12-20-000323) to their insurance company, Depositors Insurance, and requested payment for the damages incurred from the subject fire.

14. Depositors Insurance thereby became obligated to pay and did pay an amount of \$319,067.66 for the damages incurred as a result of this fire.

15. Pursuant to their payment, the Plaintiff became subrogated to all rights of its insured in the amount of the damages as paid.

16. The Ungers incurred and paid their deductible of \$1,000.00.

**PLAINTIFF DEMANDS TRIAL BY JURY**

**COUNT I**  
**(Product Liability Negligence)**

1-16. Plaintiff hereby restates and realleges Paragraphs 1-16 above as Paragraphs 1-16 of Count I, as though fully set forth herein

17. The subject toaster oven at the Unger residence was manufactured by the Defendant, Hamilton Beach.

18. At the time the subject toaster oven was placed into the stream of commerce by the Defendant, Hamilton Beach, the product was unreasonably dangerous and/or defective for the reasonably anticipated use and manner as expected by the consumer.

19. At all times relevant, the subject toaster was used in a reasonably anticipated manner.

20. As a direct and proximate result of the unreasonably dangerous and defective product, the Unger residence and property was damaged by fire.

21. As a result of Defendant's unreasonably dangerous and defective product, the Plaintiff has been harmed and incurred damage.

WHEREFORE, the Plaintiff, Depositors Insurance as subrogee of Michael and Melissa Unger, hereby prays that a judgment be entered in its favor and against the Defendant, Hamilton Beach, in the amount of \$422,000.00, plus costs of this suit, and for any further payments made on the damages incurred, and for all other relief which this Court deems just.

**PLAINTIFF DEMANDS TRIAL BY JURY**

**COUNT II**  
**(Failure to Warn)**

1-21. Plaintiff hereby restates and realleges Paragraphs 1-21 of Count I as Paragraphs 1-21 of Count II, as though fully set forth herein.

22. The subject toaster oven at the Unger residence was manufactured and intended for personal use and residential home use, as was being done by the Ungers at the time of the fire.

23. The subject toaster was used in a reasonably anticipated manner.

24. The Defendant did not provide any warnings (nor adequate warnings) of the imminent dangers presented by the toaster oven, nor any warnings as to its danger or potential for fire in this manner.

25. At all times relevant, the subject toaster oven was used in a reasonably anticipated manner, given the lack of warning and instruction by the Defendant.

26. As a direct and proximate result of the subject toaster oven being sold without proper and/or adequate warnings, the Unger residence and property were damaged by fire.

27. As a direct and proximate result of the subject toaster oven being sold without proper and/or adequate warnings, the Plaintiff has been harmed and has incurred damage.

WHEREFORE, the Plaintiff, Depositors Insurance as subrogee of Michael and Melissa Unger, hereby prays that a judgment be entered in its favor and against the Defendant, Hamilton Beach, in the amount of \$422,000.00, and for the costs of this suit, and any further payments made on the damages incurred, and for all other relief which this Court deems just.

**PLAINTIFF DEMANDS TRIAL BY JURY.**

**COUNT III**  
**(Strict Liability)**

1-21. Plaintiff hereby realleges and restates Paragraphs 1-21 of Count I as Paragraphs 1-21 of Count III, as though fully set forth herein.

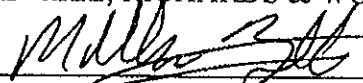
22. The subject toaster oven was an unreasonably dangerous product as manufactured by Defendant.

23. The Defendant should therefore be held strictly liable for the damages incurred herein.

WHEREFORE, the Plaintiff, Depositors Insurance as subrogee of Michael and Melissa Unger, hereby prays that a judgment be entered in its favor and against the Defendant, Hamilton Beach, in the amount of \$422,000.00, and for the costs of this suit, and any further payments made on the damages incurred, and for all other relief which this Court deems just.

**PLAINTIFF DEMANDS TRIAL BY JURY**

NEVILLE, RICHARDS & WULLER, LLC

  
Matthew C. Zittel #06244183  
5 Park Place Professional Centre  
Belleville, IL 62226  
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5 064

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v. )

HAMILTON BEACH/PROCTOR-SILEX, INC., )

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Case No.

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AFFIDAVIT AS TO DAMAGES

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF ST. CLAIR )

COMES now Matthew C. Zittel of Neville, Richards & Wuller, LLC, after being duly sworn, states:

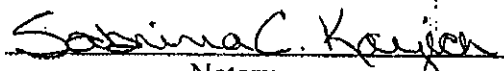
1. I am an attorney for the plaintiff in the above entitled cause.
2. The total amount of damages sought does exceed fifty thousand dollars (\$50,000.00).
3. This Affidavit is made pursuant to Illinois Supreme Court Rule 222(b).

FURTHER AFFIANT SAYETH NOT.

  
Matthew C. Zittel

Subscribed and sworn to before me this 16<sup>th</sup> day of January 2008.



  
Notary

JANUARY 17, 2008

IN THE CIRCUIT COURT  
FOR THE THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

DEPOSITORS INSURANCE COMPANY (A SUBSIDIARY OF NATIONWIDE INS  
Plaintiff(s),

VS.

CASE NUMBER: 2008 L 000037

HAMILTON BRACH/PROCTOR SILEX INC  
Defendant(s)

ASSIGNMENT ORDER

The above case is hereby assigned to the Honorable BARBARA CROWDER  
for setting and disposition.

Clerk to send copies of this Order to the attorneys of record and any pro se party.

DATE:1/17/2008

S/ANN CALLIS  
Chief Judge

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IN THE CIRCUIT COURT FOR THE THIRD JUDICIAL CIRCUIT  
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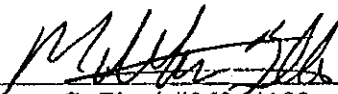
Case No.

08L37

**TWELVE PERSON JURY DEMAND**

NOW comes plaintiff, Depositors Insurance Company, as subrogee of Michael and Melissa Unger, by and through its attorneys, Neville, Richards & Wuller, LLC, and hereby demands a jury of twelve persons in the above referenced matter.

NEVILLE, RICHARDS & WULLER, LLC

  
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