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November 2, 2011 4:18 PM
TRACEY CORDES, CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

AUTO OWNERS INSURANCE COMPANY,
Subrogee of Stephen Hajek and Florence
Hajek,

1:11-cv-1157
Janet T. Neff
U.S. District Judge

Plaintiff,

Case No.:

v

Honorable

HALLMARK CARDS, INC., a Missouri
Corporation, and TAIWAN NOVELTY,
LTD, a Foreign Corporation Incorporated
In Taiwan,

Original Action

Defendants.

Richard A. Marvin (P41433)
MARVIN & ASSOCIATES
Attorneys for Plaintiff
4608 Plainfield Avenue, NE
Grand Rapids, MI 49525
Telephone: (616) 447-1664
Fax: (616) 447-1665
Email: rick@marvlaw.net

COMPLAINT
DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, Auto Owners Insurance Company, Subrogee of
Stephen Hajek and Florence Hajek, by and through its attorney, Richard A. Marvin
of Marvin & Associates, Attorneys and Counselors at Law, and for its Complaint
against Defendants, states:

JURISDICTIONAL ALLEGATIONS

1. Plaintiff, Auto Owners Insurance Company of America, subrogee of Stephen Hajek and Florence Hajek, (hereinafter "Auto Owners"), is a Michigan insurance company duly licensed and authorized to insure real and personal property in the state of Michigan and with its principal place of business in Ingham County, Lansing, Michigan.

2. Defendant, Hallmark Cards, Inc., (hereinafter "Hallmark") is Missouri Corporation, appropriately licensed for and engaged in the business of the design, manufacture, packaging, marketing and sale of consumer products including but not limited to jumbo snowman snowglobes, and with its principal offices located at 2501 McGee Street, Kansas City, MO 64108-2600, and has at all times herein relevant and material, been engaged in the continuous and systematic conduct of business throughout the State of Michigan including the County of Emmet, where it distributes and sells consumer products including but not limited to the said jumbo snowman snowglobe which it previously sold there.

3. Defendant, Taiwan Novelty Ltd., (hereinafter, "Taiwan") is a foreign corporation duly incorporated in the foreign country of Taiwan, appropriately licensed for and engaged in the business of the design, manufacture, packaging, marketing and sale of consumer products including but not limited to jumbo snowman snowglobes designed, manufactured, packaged, and/or sold to Defendant Hallmark for resale to other distributors and consumers including Hajek Corporation, a Michigan Corporation doing business in the State of Michigan.

4. The events giving rise to this Complaint involve damage to real and personal property located in Emmet County at 4589 Greenwood Church Road, Petoskey, Michigan.

5. The damages at issue in this case amount to at least One Million,

Eight Hundred Nine Thousand, Three and 67/100 Dollars (\$1,809,003.67).

6. Defendant Hallmark actively solicited sales in the state of Michigan, advertised and sells its consumer products throughout the State of Michigan including the subject Jumbo Snowman Snowglobe that gave rise to the damage alleged in this case and occurring in Emmet County, Michigan.

GENERAL ALLEGATIONS

7. Plaintiff realleges paragraphs 1 through 6, above.

8. Prior to November 6, 2008, Defendant Taiwan designed, manufactured, packaged and/or sold a Jumbo Snowman Snowglobe, placing it into the stream of commerce by selling it to Defendant Hallmark for resale to various distributors and consumers here in Michigan and throughout the United States.

9. Prior to November 6, 2008, Defendant Hallmark designed, manufactured, packaged and sold the said Jumbo Snowman Snowglobe, or in the alternative, chose the design, materials, manufacturing methods, packaging and then placed it into the stream of commerce by selling it consumers and various other distributors including Hajek Corporation for resale to consumers here in Michigan and throughout the United States.

10. Prior to November 6, 2008, Hajek Corporation transferred the said Jumbo Snowman Snowglobe to the personal residence of Stephen and Florence Hajek where it was then temporarily stored in the garage of their personal residence located in Emmet County at Petoskey Michigan at 4589 Greenwood Church Road, Petoskey, Michigan.

11. While being stored at said personal residence, the Jumbo Snowman Snowglobe was subjected to sunlight.

12. The said Jumbo Snowman Snowglobe caused an optical effect known as refraction which, like a magnifying glass in the sun, ignited an unfriendly fire in nearby combustibles, thus causing complete destruction of Stephen and Florence Hajek's personal residence, including but not limited to any and all real and personal property located at 4589 Greenwood Church Road, Petoskey, Michigan, totaling at least One Million, Eight Hundred Nine Thousand, Three and 67/100 Dollars (\$1,809,003.67).

13. Prior to November 6, 2008, Auto Owners issued to Stephen and Florence Hajek its Property Insurance Policy No. 79819198 insuring their residential home and personal property located in Emmet County at 4589 Greenwood Church Road, Petoskey, Michigan.

14. Pursuant to the terms and conditions of its insurance policy with Vanliere, and upon timely presentment of a proper claim and proof of loss by its insureds, Auto Owners became obligated to and did in fact pay its subrogors, Stephen and Florence Hajek an amount of at least One Million, Eight Hundred Nine Thousand, Three and 67/100 Dollars (\$1,809,003.67).

15. By reason of that payment, and pursuant to the terms and provisions of its policy of insurance, Plaintiff, Citizens, became, and is now subrogated to the rights of Vanliere against the Defendants to the full extent of that payment, and in the full amount paid which exceeds One Million, Eight Hundred Nine Thousand, Three and 67/100 Dollars (\$1,809,003.67).

COUNT I
(NEGLIGENCE OF DEFENDANTS HALLMARK AND TAIWAN

16. Plaintiff realleges paragraphs 1 through 15.

17. Defendants owed certain duties of ordinary due care as well as duties under common law and statute, and relevant standards of the industry which they breached including the following:

a. Failing to warn of the unreasonable risk of unfriendly fire posed by the product they had placed into the stream of commerce that they knew or should have known of based upon the readily knowledge, data, and scientific data available at the time concerning the dangers of refracted light caused optically by such products;

b. Failing to replace the product which posed an unreasonable risk of unfriendly fire;

c. Failing to recall the product which posed an unreasonable risk of unfriendly fire;

d. Placing a defective product into the stream of commerce which posed an unreasonable risk of unfriendly fire (as indicated in the Joint Recall of the defective product issued by Hallmark Cards, Inc. U.S. Product Safety Commission, attached hereto as Exhibit 1) ;

e. Failing to properly design the product so that it would not pose an unreasonable risk of unfriendly fire, such as increasing the surface area of the

globes beyond that which any consumer, distributor or seller had previously been accustomed, thus increasing the refracted light to a dangerous level which posed an unreasonable risk of unfriendly fire;

f. Using inappropriate materials in the shell and interior fluid of the product constituting an unsafe medium for light to pass through in that same increased the refracted light to a dangerous level which posed an unreasonable risk of unfriendly fire;

g. Failing to warn of the danger of unreasonable risk of unfriendly fire should the product be placed in the sunlight where refracted light could cause an unfriendly fire;

h. Failing to use feasible, alternative designs and materials for the product which would dramatically reduce if not eliminate the unreasonable risk of unfriendly fire posed by the product as designed and manufactured and sold by defendants;

i. Failing to inspect and otherwise test the product to ensure that its design and construction was safe for all foreseeable uses and foreseeable misuses that distributors, sellers and consumers might put it to so that it would not pose an unreasonable risk of unfriendly fire, including its optical effects causing dangerous levels of refractive light to be emitted;

j. Failing to properly package the product with instructions, labels, warnings, etc. that would properly and reasonable notify sellers, distributors and consumers of the unreasonable risk of unfriendly fire posed by the product

when it is subjected to sunlight;

k. Otherwise failing to use reasonable care in the design, manufacture, packaging, distribution and sale of the product, thus creating an unreasonable risk of unfriendly fire posed by the product when it is subjected to sunlight;

l. Defendants owed a duty of due care to bystanders concerning the unreasonable risk of unfriendly fire posed by the product when it is subjected to sunlight;

m. The product contained a concealed hazard in the materials it contained and relative optical properties thereof;

n. Duty to use reasonable care in the design of the product to guard against unreasonable or foreseeable risks;

18. As a direct and proximate result of Defendants' said breach of duties, Plaintiff's Subrogors, Stephen and Florence Hajek, sustained the loss of their personal residence, including but not limited to any and all real and personal property located at 4589 Greenwood Church Road, Petoskey, Michigan, and totaling at least One Million, Eight Hundred Nine Thousand, Three and 67/100 Dollars (\$1,809,003.67).

WHEREFORE, Plaintiff, Auto Owners, respectfully requests judgment against Defendants Hallmark and Taiwan in the amount of at least One Million, Eight Hundred Nine Thousand, Three and 67/100 Dollars (\$1,809,003.67),

together with statutory costs, judgment interest and attorneys fees allowed by law.

COUNT II
(BREACH OF IMPLIED AND EXPRESS WARRANTIES OF MERCHANTABILITY
AND FITNESS FOR A PARTICULAR PURPOSE - DEFENDANTS
HALLMARK AND TAIWAN

19. Plaintiff re-alleges paragraphs 1 through 18.

20. Plaintiff's subrogors were foreseeable, innocent, end users and/or bystanders of the defective Jumbo Snowman Snowglobe, and suffered injury to their real and personal property as a result of Defendants' breach of implied and express warranties.

25. Defendants, Hallmark and Taiwan, as designers, manufacturers, distributors, and/or sellers of the defective Jumbo Snowman Snowglobe, expressly and/or impliedly warranted that it was of merchantable quality and fit for its intended, particular purpose.

26. The Jumbo Snowman Snowglobe was not merchantable and was unfit for its intended, particular purpose for which it was used in the following ways:

- a. It was prone to start unfriendly fires due to its optical effects in sunlight that caused dangerous levels of refracted light to ignite nearby combustibles;
- b. It did not contain adequate warnings of the risk of unfriendly fire when placed in the sunlight;
- c. It was not properly designed, tested, manufactured and inspected; and
- d. It was in other ways un-merchantable and unfit for its

intended purpose and the purpose for which it was used particularly since there were other more safe, and feasible design alternatives and component materials available at the time of manufacture.

e. Failing to conform its conduct to then-existing industry standards which required the use of a different design and materials so that the product would not pose an unreasonable risk of unfriendly fire.

27. As a direct and proximate result of the breach of warranties by the Defendants, Hallmark and Taiwan, and unfriendly fire was started by the Jumbo Snowman Snowglobe ultimately resulting in damages to Auto Owners in an amount exceeding One Million, Eight Hundred Nine Thousand, Three and 67/100 Dollars (\$1,809,003.67).

WHEREFORE, Plaintiff, Auto Owners, respectfully requests judgment against Defendants Hallmark and Taiwan in the amount of at least One Million, Eight Hundred Nine Thousand, Three and 67/100 Dollars (\$1,809,003.67), together with statutory costs, judgment interest and attorneys fees allowed by law.

COUNT III

(PRODUCT LIABILITY OF DEFENDANTS HALLMARK AND TAIWAN)

28. Plaintiff re-alleges paragraphs 1 through 27.

29. Defendants Hallmark and Taiwan designed, manufactured, packaged, marketed, distributed and/or sold a Jumbo Snowman Snowglobe that

was not reasonably safe at the time that the product left control of defendants in the following ways, among others, despite the fact that there were practical, economically feasible, and technically feasible alternative materials, designs and production practices which would have prevented the harm without significantly impairing the usefulness or desirability of the product to the users and without creating equal or greater risk of harm to others:

a. The product created an unreasonable risk of unfriendly fire due to the dangers of refracted light caused optically by such products;

b. Placing a defective product into the stream of commerce which posed an unreasonable risk of unfriendly fire (as indicated in the Joint Recall of the defective product issued by Hallmark Cards, Inc. U.S. Product Safety Commission, attached hereto as Exhibit 1) ;

c. The design the product posed an unreasonable risk of unfriendly fire, such as increasing the surface area of the globes beyond that which any consumer, distributor or seller had previously been accustomed, thus increasing the refracted light to a dangerous level which posed an unreasonable risk of unfriendly fire;

d. Using inappropriate materials in the shell and interior fluid of the product constituting an unsafe medium for light to pass through in that same increase the refracted light to a dangerous level which posed an unreasonable risk of unfriendly fire;

e. Placing the product in the sunlight causes it to emit refracted

light which causes an unreasonable risk of unfriendly fire in that it can and will ignite nearby combustibles;

f. Failing to use feasible, alternative designs and materials for the product which would dramatically reduce if not eliminate the unreasonable risk of unfriendly fire posed by the product as designed and manufactured and sold by defendants;

g. The product's design and materials used were not safe for all foreseeable uses and foreseeable misuses that distributors, sellers and consumers might put it to so that it posee an unreasonable risk of unfriendly fire, including its optical effects causing dangerous levels of refractive light to be emitted;

h. Failing to properly package the product with instructions, labels, warnings, etc. that would properly and reasonable notify sellers, distributors and consumers of the unreasonable risk of unfriendly fire posed by the product when it is subjected to sunlight;

i. The product contained a concealed hazard in the materials it contained and relative optical properties thereof;

30. As a direct and proximate result of the defective product, breach of express and/or implied warranties, failure to warn, and negligence of the Defendants, Hallmark and Taiwan, and unfriendly fire was started by the Jumbo Snowman Snowglobe ultimately resulting in damages to Auto Owners in an amount exceeding One Million, Eight Hundred Nine Thousand, Three and 67/100

Dollars (\$1,809,003.67).

MARVIN & ASSOCIATES

Attorneys for Plaintiff

Dated: 11-02-11

By: 

Richard A. Marvin (P41433)

Business Address:

MARVIN & ASSOCIATES

Attorneys and Counselors at Law

4608 Plainfield Ave., N.E.

Grand Rapids, MI 49525

(616) 447-1664

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