

# CIVIL COVER SHEET

12 1254

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**PBT**

<b>I. (a) PLAINTIFFS</b> Szena, Derek A.  <b>(b) County of Residence of First Listed Plaintiff</b> <u>Carbon County, PA</u> (EXCEPT IN U.S. PLAINTIFF CASES)  <b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> Armin Feldman, P.O. Box 206, Berwyn, PA 19312-0206	<b>DEFENDANTS</b> Assistive Technology, Inc.  County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.  Attorneys (If Known) _____
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<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)  <table border="1"> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> DEF</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> DEF</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> DEF	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> DEF	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability  <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding   
 2 Removed from State Court   
 3 Remanded from Appellate Court   
 4 Reinstated or Reopened   
 5 Transferred from another district (specify)   
 6 Multidistrict Litigation   
 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 1332

Brief description of cause:  
Product liability, defective shower chair

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23    **DEMAND \$** 150,000.00    **JURY DEMAND:**  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE 03/07/2012    SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 775 Deer Lane, Lehighton, PA 18235

Address of Defendant: 21279 Protecta Drive, Elkhart, IN 46516

Place of Accident, Incident or Transaction: Montgomery County, PA  
*(Use Reverse Side For Additional Space)*

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))  
Yes  No

Does this case involve multidistrict litigation possibilities?  
Yes  No

RELATED CASE, IF ANY:  
Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes  No
- 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes  No
- 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes  No
- 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes  No

CIVIL: (Place  in ONE CATEGORY ONLY)

- A. Federal Question Cases:
- 1.  Indemnity Contract, Marine Contract, and All Other Contracts
  - 2.  FELA
  - 3.  Jones Act-Personal Injury
  - 4.  Antitrust
  - 5.  Patent
  - 6.  Labor-Management Relations
  - 7.  Civil Rights
  - 8.  Habeas Corpus
  - 9.  Securities Act(s) Cases
  - 10.  Social Security Review Cases
  - 11.  All other Federal Question Cases  
(Please specify)

- B. Diversity Jurisdiction Cases:
- 1.  Insurance Contract and Other Contracts
  - 2.  Airplane Personal Injury
  - 3.  Assault, Defamation
  - 4.  Marine Personal Injury
  - 5.  Motor Vehicle Personal Injury
  - 6.  Other Personal Injury (Please specify)
  - 7.  Products Liability
  - 8.  Products Liability — Asbestos
  - 9.  All other Diversity Cases  
(Please specify)

### ARBITRATION CERTIFICATION

(Check Appropriate Category)

MAR 12 2012

I, \_\_\_\_\_, counsel of record do hereby certify:  
 Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;  
 Relief other than monetary damages is sought.

DATE: \_\_\_\_\_ Attorney-at-Law \_\_\_\_\_ Attorney I.D.# \_\_\_\_\_

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 3/7/2012 \_\_\_\_\_ 22816 \_\_\_\_\_  
Attorney-at-Law Attorney I.D.#

**PBT**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Derek A. Szena

CIVIL ACTION

v.

Assistive Technology, Inc.

**12** NO. **1254**

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (x)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

3/7/2012

*Armin Feldman*  
Armin Feldman

Plaintiff, Derek A. Szena

**Date**

**Attorney-at-law**

**Attorney for**

610-640-4429

610-640-0962

arminfeldman2002@yahoo.com

**Telephone**

**FAX Number**

**E-Mail Address**

*MAF 12/12*

\$350.00

**PBT**

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DEREK A. SZENA  
775 Deer Lane  
Lehighton, PA 18235

CIVIL ACTION NO.

**FILED**

MAR 12 2012

12 1254

v.

ASSISTIVE TECHNOLOGY, INC.  
21279 Protecta Drive  
Elkhart, IN 46516

MICHAEL E. KUNZ, Clerk  
By *[Signature]* Dep. Clerk

JURY TRIAL DEMANDED

**COMPLAINT**

1. The plaintiff Derek A. Szena (hereinafter "Mr. Szena") is an adult individual who resides at 775 Deer Lane, Lehighton, Pennsylvania, and is a citizen of the Commonwealth of Pennsylvania.

2. Mr. Szena was born in 1993, and has been diagnosed as suffering from Duchenne's Muscular Dystrophy.

3. The defendant, Assistive Technology, Inc. (hereinafter "ATI"), is an Indiana corporation with registered offices and principal place of business located at 21279 Protecta Drive, Elkhart, Indiana.

4. The jurisdiction of this Court is based on the diverse citizenship of the parties; the amount in controversy is in excess of the sum of \$75,000 exclusive of interest and costs.

5. Prior to July 10, 2008, Mr. Szena ordered an ATI shower chair referred to by ATI as a Tilt-In-Space Slider, TSL100EX (hereinafter "the ATI shower chair").

*[Handwritten signature]*  
3-12-12

6. On July 10, 2008, the ATI shower chair was delivered to Mr. Szena.

7. On June 18, 2009, Mr. Szena was sitting on the ATI shower chair when one of the wheels of the ATI shower chair suddenly became disconnected from the chair causing Mr. Szena to fall and suffer injuries.

8. The ATI shower chair was designed, manufactured, marketed, promoted, sold, supplied, and distributed by ATI.

9. As a result of the incident, Mr. Szena sustained the following injuries and damages:

a. Serious bodily injury including the fracture of his right distal femur and an aggravation of his pre-existing condition.

b. He has been obliged to receive and undergo medical attention and care and has spent various sums of money for the injuries he has suffered.

c. He has suffered physical pain, mental anguish, and loss of life's pleasures.

d. The loss of a shower chair, the cost of which was \$3,352.00.

## **COUNT I – NEGLIGENCE**

### **MR. SZENA v. ATI**

10. The averments contained in paragraphs 1 through 9 are incorporated herein by reference and made a part hereof.

11. ATI, in its own right and by and through its employees, agents, workers, servants, and independent contractors, was negligent and careless in the following respects:

- a. For failing to provide a shower which was fit for its intended purpose.
- b. For failing to design properly the ATI shower chair.
- c. For failing to manufacture properly the ATI shower chair.
- d. For failing to inspect properly the ATI shower chair after it was manufactured.
- e. For failing to ship properly the ATI shower chair after it was manufactured.
- f. For failing to construct the ATI shower chair with appropriate materials.
- g. For having marketed, promoted, distributed, supplied, and sold a shower chair which could suddenly and unexpectedly fail.
- h. For creating a dangerous condition which presented a serious risk of harm to others, such as Mr. Szena.
- i. For failing to have with the ATI shower chair adequate safety features so as to prevent the shower chair from failing suddenly.
- j. For failing to provide the ATI shower chair with every element which would make it safe for its intended use.
- k. Such other acts or omissions constituting carelessness, negligence, recklessness, and/or gross negligence which may appear during the course of discovery or at the trial of this case.

12. At the time Mr. Szena was using the ATI shower chair on June 18, 2009, it

was being used in a manner and for a purpose for which it was intended.

13. Prior to the incident, there had been no substantial or unforeseeable change to the ATI shower chair from its condition when it was sold by ATI.

14. The negligence and carelessness of ATI, in its own right and by and through its employees, agents, workers, servants, and independent contractors, were the factual cause of Mr. Szena's above-described injuries and damages.

WHEREFORE, Mr. Szena demands judgment against ATI for an amount in excess of \$75,000, exclusive of interest and costs.

### **COUNT II - STRICT LIABILITY**

#### **MR. SZENA v. ATI**

15. The averments contained in paragraphs I through 14 are incorporated herein by reference and made a part hereof.

16. At all times relevant hereto ATI was in the business of marketing, promoting, distributing, supplying, selling, designing, and/or manufacturing shower chairs such as the ATI shower chair.

17. ATI is strictly liable to Mr. Szena because the ATI shower chair was defective.

WHEREFORE, Mr. Szena demands judgment against ATI for an amount in excess of \$75,000, exclusive of interest and costs.

### **COUNT III – BREACH OF IMPLIED AND EXPRESS WARRANTIES**

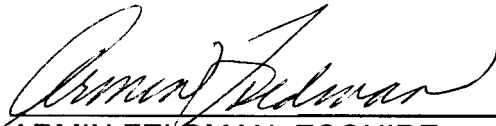
#### **MR. SZENA v. ATI**

18. The averments contained in paragraphs I through 17 are incorporated

herein by reference and made a part hereof.

19. ATI is liable to Mr. Szena because it breached implied and express warranties with regard to the ATI shower chair.

WHEREFORE, Mr. Szena demands judgment against ATI for an amount in excess of \$75,000, exclusive of interest and costs.



ARMIN FELDMAN, ESQUIRE

Attorney for Plaintiffs

Attorney I.D. #22816

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