

Breanna Nicole Kelly Talley and Joshua David)
Wistafke, Jr., and injured Timothy Shawn)
Wistafke, in the fire which occurred on or about)
June 14, 2000, described herein; and)
DEFENDANTS M, N, and O, whether singular or)
plural, being that person, firm, corporation, or other)
entity who or which failed to warn Plaintiffs of the)
risk of serious injury or death beyond which would)
be understood by the average user or consumer)
from the sectional sofa described herein and made)
the basis of this lawsuit,)
))
))
Defendants.)

COMPLAINT

PARTIES

1. Plaintiff Melissa Talley Wistafke is over the age of 19 years and is a resident of Madison County, Alabama. Plaintiff Joshua Wistafke is over the age of 19 years and is a resident of Madison County, Alabama. Plaintiff Melissa Talley Wistafke brings this action as personal representative of the estate of her daughter, Breanna Nicole Kelly Talley, deceased minor, personal representative of the estate of her son, Joshua David Wistafke, Jr., deceased minor, seeking damages for their wrongful deaths, and as mother and next friend of Timothy Shawn Wistafke, a minor, seeking damages for personal injury suffered by him. Plaintiff Joshua Wistafke brings this action as father and next friend of Timothy Shawn Wistafke, a minor, seeking damages for personal injury suffered by him. Joshua David Wistafke, Jr., was also the son of Joshua Wistafke.

2. Defendant La-Z-Boy Incorporated, hereafter "La-Z-Boy," is a corporation organized and existing under the laws of the State of Michigan and is in the business of designing, manufacturing, distributing, and/or selling upholstered furniture products which are distributed nationally and internationally, including distributions to consumers in the State of Alabama.

3. Defendant LZB Acquisition, Inc., hereafter "LZB," is a corporation organized and existing under the laws of the State of Michigan, and is in the business of designing, manufacturing, distributing, and/or selling upholstered furniture products which are distributed nationally, including distributions to consumers in the State of Alabama.

4. Defendant England/Corsair, Inc., hereafter "England Corsair," is a corporation organized and existing under the laws of the State of Michigan. England Corsair is in the business of designing, manufacturing, distributing, and/or selling upholstered furniture products which are distributed nationally, including distributions to

consumers in the State of Alabama.

5. Defendant England, Inc., hereafter "England," is a corporation organized and existing under the laws of the State of Michigan. England is in the business of designing, manufacturing, distributing, and/or selling upholstered furniture products which are distributed nationally, including distributions to consumers in the State of Alabama.

6. Defendant Rent-A-Center, Inc., hereafter "Rent-A-Center," is a corporation organized and existing under the laws of the State of Delaware. Rent-A-Center is in the business of manufacturing, distributing, renting, renting-to-own, and/or selling upholstered furniture products which are distributed nationally, including distributions to consumers in the State of Alabama.

7. Plaintiffs aver that the true names of the fictitious party defendants are unknown and their true names will be substituted by amendment when ascertained.

AVERMENTS

8. On or about June 14, 2000, Breanna Nichole Kelly Talley, a minor, and Joshua David Wistafke, a minor, died as a result of a fire that started in the living room area of Plaintiffs' home located in Madison County, Alabama. Timothy Shawn Wistafke, a minor, was severely injured in the fire.

9. Melissa Talley Wistafke and Joshua Wistafke purchased or rented-to-own an upholstered England/Corsair sectional sofa consisting of three separate pieces, including a sleeper section (hereafter the "sectional sofa"), from Rent-A-Center located on North Memorial Parkway in Huntsville, Madison County, Alabama on or about May 15, 2000. This sectional sofa was located in the living room area of Melissa and Joshua Wistafke's mobile home and caught fire on or about June 14, 2000. In this complaint the term the "sectional sofa" is used to describe the aforementioned sectional sofa and any and/or all components thereof.

COUNT ONE ALABAMA EXTENDED MANUFACTURER'S LIABILITY DOCTRINE

10. Paragraphs 1 through 9 are incorporated herein as if set out in full.

11. Each Defendant (herein described in the caption of this Complaint and made a part hereof as if fully set out herein) designed, manufactured, marketed, tested, distributed, rented-to-own, rented, and/or sold the upholstered sectional sofa which caught on fire in Melissa and Joshua Wistafke's mobile home on or about June 14, 2000. Therefore each Defendant placed such sectional sofa in the stream of commerce, where it

ultimately reached Melissa Talley Wistafke, Joshua Wistafke, Breanna Nicole Kelly Talley, Joshua David Wistafke, Jr., and Timothy Shawn Wistafke (hereafter "the Wistafke family"), who were foreseeable users of the sectional sofa.

12. The above-described sectional sofa was without substantial change in its condition from the time it was designed, manufactured, marketed, tested, rented-to-own, rented, and/or sold by each Defendant until the date of the fire. The Wistafke family were using the manufactured sectional sofa in a reasonably foreseeable manner at the time of the fire.

13. When each Defendant placed the sectional sofa on the market for sale and resale, it was in a defective condition that was unreasonably dangerous to the Wistafke family, as the ultimate users or consumers of such sectional sofa, in that:

(a) it possessed physical properties of excessive flammability in the event the sectional sofa was exposed to a small ignition source;

(b) it failed to possess fire retardants and/or fire resistive liners around polyurethane foam and/or other petroleum-based components of the sectional sofa to retard the rate of fire growth when the sectional sofa was exposed to a small ignition source;

(c) it failed to contain adequate warnings to users and consumers despite each Defendant's knowledge of the physical properties of excessive flammability and toxicity associated with the sectional sofa;

(d) it was not covered with a flame resistant material;

(e) it possessed physical properties permitting emission of toxic chemicals and gases capable of causing serious injury or death when exposed to small ignition sources; and

(f) it incorporated excessive amounts of highly flammable polyurethane foam when other less flammable materials were feasible and available for use.

(g) It incorporated a mattress containing highly flammable polyurethane foam.

I DON'T UNDERSTAND "WHOLE LIST"

14. A safer, practical and alternative design was available to each Defendant at the time it manufactured WHOLE LIST?? the sectional sofa in question.

15. As a direct and proximate result of the defective and unreasonably dangerous condition of the sectional sofa, Breanna Nicole Kelly Talley and Joshua David Wistafke, Jr.

were caused to die and Timothy Shawn Wistafke suffered severe temporary and permanent personal injury, including, but not limited to, burns and smoke inhalation, pain and suffering, mental anguish and emotional distress, and incurred medical, hospital, therapy, and prescription expenses.

WHEREFORE, premises considered, the Plaintiff Melissa Wistafke demands judgment against each Defendant for the wrongful deaths of her minor children Breanna Nicole Kelly Talley and Joshua David Wistafke, Jr., for all damages allowed by law including compensatory and punitive damages in such amount as is within the sound judgment of the jury, plus costs. Plaintiffs Melissa and Joshua Wistafke, as parents and next friends of Timothy Shawn Wistafke, further demand judgment for compensatory and punitive damages against each Defendant in such amount as is within the sound judgment of the jury, plus costs.

COUNT TWO NEGLIGENCE

16. Paragraphs 1 through 15, where not inconsistent herewith, are incorporated herein as if set out in full.

17. Each Defendant (herein described in the caption of this Complaint and made a part hereof as if fully set out herein) owed a duty of due care to the Wistafke family to design, manufacture, distribute, market, rent-to-own, rent, and/or sell upholstered furniture products, including the sectional sofa, which are reasonably safe from a fire safety standpoint and which adequately warned the Wistafke family about flammability and toxicity hazards inherent in Defendants' upholstered furniture products, including the sectional sofa which was being used by the Wistafke family prior to and during the fire on June 14, 2000.

18. Each Defendant participated in designing, manufacturing, marketing, renting-to-own, renting, and/or selling the sectional sofa which is the subject of this action and was negligent in that:

(a) it failed to incorporate fire retardants and/or fire protective liners around polyurethane foam components to reduce the flammability of the sectional sofa when such design and construction methods were known to be available and feasible;

(b) it placed considerations of costs above considerations of fire safety in the designing, manufacturing, distributing, marketing, renting-to-own, renting, and/or selling of the sectional sofa;

(c) it failed to incorporate ignition resistant covering material for the sectional sofa;

(d) it failed to adequately test their upholstered furniture products, including the sectional sofa, to ascertain the rate at which they burn when exposed

to small ignition sources;

(e) it designed, manufactured, distributed, marketed, rented-to-own, rented, and/or sold such sectional sofa with physical properties of excessive flammability, toxicity, and rate of heat release when exposed to a small ignition source;

(f) it failed to adequately warn purchasers and users of the inherent flammability and toxicity hazards associated with the sectional sofa, particularly the amount of energy contained in foam products, including the sectional sofa, the rate at which foam burns when ignited, the rate of heat release, and it failed to warn of the risk of serious injury or death beyond that understood by the average user or consumer of its upholstered furniture products;

(g) it failed to warn of serious injury or death which can occur from toxic gases released by the sectional sofa when it is exposed to a small ignition source;

(h) it, to the best belief and knowledge of the Plaintiffs at the time of the filing of this complaint, vigorously opposed efforts by governmental and other entities to regulate and/or lessen the flammability of upholstered furniture products when they knew that more home fire deaths in this country involve furniture than any other product or material;

(i) it failed to act as reasonable and prudent upholstered furniture manufacturers and sellers under the existing circumstances;

(j) it used excessive amounts of highly flammable polyurethane foam when safer less flammable materials were feasible and available, and actually being used by Defendants in other similar products; and

(k) in incorporating a highly flammable foam-filled mattress in the sectional sofa.

19. As a direct and proximate result of the negligent acts of each Defendant, and/or the combining and concurring negligent acts of each Defendant, Breanna Nicole Kelly Talley and Joshua David Wistafke, Jr. were caused to die and Timothy Shawn Wistafke suffered severe temporary and permanent personal injury, including, but not limited to, burns and smoke inhalation, pain and suffering, mental anguish and emotional distress, and incurred medical, hospital, therapy, and prescription expenses.

WHEREFORE, premises considered, the Plaintiff Melissa Wistafke demands judgment against each Defendant for the wrongful deaths of her minor children Breanna Nicole Kelly Talley and Joshua David Wistafke, Jr., for all damages allowed by law including compensatory and punitive damages in such amount as is within the sound judgment of the jury, plus costs. Plaintiffs Melissa and Joshua Wistafke, as parents and

next friends of Timothy Shawn Wistafke, further demand judgment for compensatory and punitive damages against each Defendant in such amount as is within the sound judgment of the jury, plus costs.

COUNT THREE WANTONNESS

20. Paragraphs 1 through 19, where not inconsistent herewith, are incorporated herein as if set out in full.

21. Each Defendant (herein described in the caption of this Complaint and made a part hereof as if fully set out herein) owed a duty of due care to the Wistafke family to design, manufacture, distribute, market, rent-to-own, rent, and/or sell upholstered furniture products, including the sectional sofa, which are reasonably safe from a fire safety standpoint and which adequately warned the Wistafke family about flammability and toxicity hazards inherent in Defendants' upholstered furniture products, including the sectional sofa which was being used by the Wistafke family prior to and during the fire on June 14, 2000.

22. Each Defendant participated in designing, manufacturing, marketing, renting-to-own, renting, and/or selling the sectional sofa which is the subject of this action and was wanton in that:

(a) it failed to incorporate fire retardants and/or fire protective liners around polyurethane foam components to reduce the flammability of the sectional sofa when such design and construction methods were known to be available and feasible;

(b) it placed considerations of costs above considerations of fire safety in the designing, manufacturing, distributing, marketing, renting-to-own, renting, and/or selling of the sectional sofa;

(c) it failed to incorporate ignition resistant covering material for the sectional sofa;

(d) it failed to adequately test their upholstered furniture products, including the sectional sofa, to ascertain the rate at which they burn when exposed to small ignition sources;

(e) it designed, manufactured, distributed, marketed, rented-to-own, rented, and/or sold such sectional sofa with physical properties of excessive flammability, toxicity, and rate of heat release when exposed to a small ignition source;

(f) it failed to adequately warn purchasers and users of the inherent flammability and toxicity hazards associated with the sectional sofa, particularly the

amount of energy contained in foam products, including the sectional sofa, the rate at which foam burns when ignited, the rate of heat release, and it failed to warn of the risk of serious injury or death beyond that understood by the average user or consumer of its upholstered furniture products;

(g) it failed to warn of serious injury or death which can occur from toxic gases released by the sectional sofa when it is exposed to a small ignition source;

(h) it, to the best belief and knowledge of the Plaintiffs at the time of the filing of this complaint, vigorously opposed efforts by governmental and other entities to regulate and/or lessen the flammability of upholstered furniture products when they knew that more home fire deaths in this country involve furniture than any other product or material;

(i) it failed to act as reasonable and prudent upholstered furniture manufacturers and sellers under the existing circumstances;

(j) it used excessive amounts of highly flammable polyurethane foam when safer less flammable materials were feasible and available, and actually being used by Defendants in other similar products; and

(k) in incorporating a highly flammable foam-filled mattress in the sectional sofa.

23. As a direct and proximate result of the wanton acts of each Defendant, Breanna Nicole Kelly Talley and Joshua David Wistafke, Jr. were caused to die and Timothy Shawn Wistafke suffered severe temporary and permanent personal injury, including, but not limited to, burns and smoke inhalation, pain and suffering, mental anguish and emotional distress, and incurred medical, hospital, therapy, and prescription expenses.

WHEREFORE, premises considered, the Plaintiff Melissa Wistafke demands judgment against each Defendant for the wrongful deaths of her minor children Breanna Nicole Kelly Talley and Joshua David Wistafke, Jr., for all damages allowed by law including compensatory and punitive damages in such amount as is within the sound judgment of the jury, plus costs. Plaintiffs Melissa and Joshua Wistafke, as parents and next friends of Timothy Shawn Wistafke, further demand judgment for compensatory and punitive damages against each Defendant in such amount as is within the sound judgment of the jury, plus costs.

COUNT FOUR BREACH OF WARRANTY

24. Paragraphs 1 through 23, where not inconsistent herewith, are incorporated herein as if set out in full.

25. Each Defendant (herein described in the caption of this Complaint and made a part hereof as if fully set out herein) is a seller, as such term is defined under Section 7-2-103 of the Alabama Code (1997), of consumer and household goods, including but not limited to sectional sofas.

26. Each Defendant did distribute and/or sell a sectional sofa without modification to the Wistafke family for usage in their mobile home.

27. Each Defendant impliedly warranted that the sectional sofa was reasonably fit and suitable for the ordinary purpose for which it was intended to be used. Each Defendant breached said warranty in that at the time that the sectional sofa was manufactured, assembled and sold, it was in an unreasonably dangerous and defective condition and was unsafe for its intended purpose. Each Defendant impliedly warranted that the sectional sofa was merchantable.

28. On or about June 14, 2000, a fire started on the sectional sofa located in living room of the Plaintiffs' mobile home. Such fire rapidly grew in size and intensity and spread to other areas of the mobile home. Such fire spread toxic smoke and flames and released heat so rapidly through the home that the adults were unable to locate and remove Breanna Nicole Kelly Talley and Joshua David Wistafke, Jr., from the home before they were fatally injured and before Timothy Shawn Wistafke suffered severe and life threatening injuries.

29. The fire which severely injured Timothy Shawn Wistafke and caused Breanna Nicole Kelly Talley and Joshua David Wistafke, Jr., to die was proximately and directly related to each Defendant's breach of its implied warranty of merchantability in regard to the manufacture, distribution, and/or sale of the sectional sofa in question, and/or its implied warranty that the sectional sofa was fit for its intended use.

30. As a direct and proximate result of each Defendant's breach of their implied warranties pertaining to the sectional sofa, Breanna Nicole Kelly Talley and Joshua David Wistafke, Jr. were caused to die and Timothy Shawn Wistafke suffered severe temporary and permanent personal injury, including, but not limited to, burns and smoke inhalation, pain and suffering, mental anguish and emotional distress, and incurred medical, hospital, therapy, and prescription expenses.

WHEREFORE, premises considered, the Plaintiff Melissa Wistafke demands judgment against each Defendant for the wrongful deaths of her minor children Breanna Nicole Kelly Talley and Joshua David Wistafke, Jr., for all damages allowed by law including compensatory, incidental, consequential, and punitive damages in such amount as is within the sound judgment of the jury, plus costs. Plaintiffs Melissa and Joshua Wistafke, as parents and next friends of Timothy Shawn Wistafke, further demand judgment for compensatory, incidental, consequential, and punitive damages against each Defendant in such amount as is within the sound judgment of the jury, plus costs.

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PLAINTIFF DEMANDS TRIAL BY STRUCK JURY.

Bradley P. Ryder