

IN THE CIRCUIT COURT OF MARYLAND, MONTGOMERY COUNTY

ERIE INSURANCE COMPANY a/s/o  
Minh Nguyen and Anh Nguyen  
4901 Louise Drive  
PO Box 2013  
Mechanicsburg, PA 17055

Plaintiff,

vs.

eBAY INC.  
2065 Hamilton Avenue  
San Jose, CA 95125

and

AMAZON.COM INC.  
410 Terry Avenue North  
Seattle, WA 98109-5210

Defendants.

NO. 422283V

JURY TRIAL DEMANDED

RECEIVED

JUN 16 2016

Clerk of the Circuit Court  
Montgomery County, Md.

COMPLAINT

Plaintiff, Erie Insurance Company a/s/o Minh Nguyen and Anh Nguyen, by and through its counsel, Sacks Weston Diamond LLC, hereby states as follows:

PARTIES

1. Plaintiff, Erie Insurance Company (hereinafter "Erie"), is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal place of business located at 4901 Louise Drive, PO Box 2013, Mechanicsburg, PA 17055.

2. At all times relevant hereto, Erie engaged in the business of, among other things, underwriting property insurance and was authorized to conduct business in the State of Maryland.

3. At all times relevant herein, Erie issued a policy of insurance to Minh Nguyen and Anh Nguyen that covered real and personal property located at 3614 Childress Terrace, Burtonsville, MD 20866 (hereinafter "Property").

4. Defendant, eBay Inc. is a Delaware corporation with its principal place of business located at 2065 Hamilton Avenue, San Jose, CA 95125

5. Defendant, Amazon.com Inc., is a Delaware corporation with its principal place of business located at 410 Terry Avenue North, Seattle, Washington 98109-5210.

6. At all times relevant hereto, eBay Inc. was in the business of selling, distributing, and marketing consumer goods for personal use.

7. At all times material hereto Amazon.com, Inc. was in the business of selling, distributing, and marketing consumer goods for personal use.

#### **FACTS COMMON TO ALL COUNTS**

8. On April 25, 2014, a fire occurred at the Plaintiffs' Property.

9. The fire was caused by a malfunction of a headlight distributed and/or sold by Defendants.

10. The headlight had been purchased by a friend of the Nguyen's just prior to the loss from Amazon.com, Inc. and/or eBay, Inc.

11. As a direct and proximate result of the fire, Plaintiffs' insureds sustained fire damage to their real and personal property, loss of use, and other fire related expenses in an amount in excess of \$313,166.57.

12. Pursuant to its policy of insurance with its insureds, Erie has paid to its insureds, and on their behalf, an amount in excess of \$313,166.57 and has become legally, contractually and equitably subrogated to the rights of its insureds to the extent of such payments.

**COUNT I – NEGLIGENCE**  
**PLAINTIFF v. eBay INC.**

13. Plaintiff hereby incorporates by reference each and every allegation contained in the above paragraphs as though the same were more fully set forth herein at length.

14. The above-described fire resulted from the negligence, carelessness, and recklessness of eBay Inc.

15. eBay Inc. had a duty to persons such as Plaintiffs' insureds to exercise due care in its distribution and sale of its products, such as the headlight, so as to avoid causing fire and other damages.

16. eBay Inc. breached the aforementioned duty and acted in a negligent, careless and reckless manner by way of:

- a) Failure to distribute, sell and otherwise place into the stream of commerce a properly functioning headlight;
- b) Failure to test, inspect, and examine the headlight to ensure it was in working condition prior to sale and distribution;
- c) Failure to distribute and sell the headlight in a safe and working manner so as to avoid the risk of fire;
- d) Placing the headlight into the stream of commerce when defendant knew, or should have known, that it contained defects in materials or workmanship which rendered it unsafe for its ordinary and expected use.
- e) Selling, distributing and conveying a defective product;
- f) Selling, distributing and conveying a product not fit for its ordinary and intended use;

- g) Selling, distributing and conveying a product without testing or inspection to see that it conformed to all applicable safety standards;
- h) Placing a defective, dangerous and unfit product into the stream of commerce;
- i) Offering a defective, dangerous and unfit product for sale;
- j) Offering products for sale in the United States without verifying that they meet applicable safety standards and regulations;
- k) Offering products for sale in the United States without testing or inspection to verify compliance with applicable safety regulations;
- l) Offering for sale counterfeit, fake or non-authentic products and components in violation of United States law;
- m) Failing to verify the authenticity of products sold; and,
- n) Failing to suspend, bar or terminate the accounts of sellers who defendant knows, or should know, are engaged in the sale of dangerous, defective, unsafe, or counterfeit goods.

17. As a direct and proximate result of the above-described fire loss, Plaintiff's insureds sustained fire damage to their real and personal property, loss of use, and other fire related expenses in an amount in excess of \$313,166.57.

18. Pursuant to its policy of insurance with its insureds, Erie has paid to its insureds, and on their behalf, an amount in excess of \$313,166.57 and has become legally, contractually, and equitably subrogated to the rights of its insureds to the extent of such payments.

**WHEREFORE**, Plaintiff, Erie Insurance Company a/s/o Minh Nguyen and Anh Nguyen, demands judgment against Defendant, individually, jointly and/or severally for damages in an amount in excess of \$313,166.57, together with interest, costs of suit, and such other relief as this Honorable Court deems just and proper.

**COUNT II – NEGLIGENCE**  
**PLAINTIFF v. AMAZON.COM INC.**

19. Plaintiff hereby incorporates by reference each and every allegation contained in the above paragraphs as though the same were more fully set forth herein at length.

20. The above-described fire resulted solely from the negligence, carelessness, and recklessness of Amazon.com Inc.

21. Amazon.com Inc. had a duty to persons such as Plaintiffs' insureds to exercise due care in its distribution and/or sale of its products, such as the headlight, so as to avoid causing fire and other damages.

22. Amazon.com Inc. breached the aforementioned duty and acted in a negligent, careless and reckless manner by way of:

- a) Failure to distribute, sell and otherwise place into the stream of commerce a properly functioning headlight;
- b) Failure to test, inspect, and examine the headlight to ensure it was in working condition prior to sale and distribution;
- c) Failure to distribute and sell the headlight in a safe and working manner so as to avoid the risk of fire;
- d) Failure to distribute and sell the headlight in a safe and working manner so as to avoid the risk of fire;

- e) Placing the headlight into the stream of commerce when defendant knew, or should have known, that it contained defects in materials or workmanship which rendered it unsafe for its ordinary and expected use.
- f) Selling, distributing and conveying a defective product;
- g) Selling, distributing and conveying a product not fit for its ordinary and intended use;
- h) Selling, distributing and conveying a product without testing or inspection to see that it conformed to all applicable safety standards;
- i) Placing a defective, dangerous and unfit product into the stream of commerce;
- j) Offering a defective, dangerous and unfit product for sale;
- k) Offering products for sale in the United States without verifying that they meet applicable safety standards and regulations;
- l) Offering products for sale in the United States without testing or inspection to verify compliance with applicable safety regulations;
- m) Offering for sale counterfeit, fake or, non-authentic products and components in violation of United States law;
- n) Failing to verify the authenticity of products sold; and,
- o) Failing to suspend, bar or terminate the accounts of sellers who defendant knows, or should know, are engaged in the sale of dangerous, defective, unsafe, or counterfeit goods.

23. As a direct and proximate result of the above-described fire loss, Plaintiff's insureds sustained fire damage to their real and personal property, loss of use, and other fire related expenses in an amount in excess of \$313,166.57.

24. Pursuant to its policy of insurance with its insureds, Erie has paid to its insureds, and on their behalf, an amount in excess of \$313,166.57 and has become legally, contractually and equitably subrogated to the rights of its insureds to the extent of such payments.

**WHEREFORE**, Plaintiff, Erie Insurance Company a/s/o Minh Nguyen and Anh Nguyen, demands judgment against Defendant, individually, jointly and/or severally for damages in an amount in excess of \$313,166.57, together with interest, costs of suit, and such other relief as this Honorable Court deems just and proper.

**COUNT III – BREACH OF WARRANTY**  
**PLAINTIFF v. eBay INC.**

25. Plaintiff hereby incorporates by reference each and every allegation contained in the above paragraphs as though the same were more fully set forth herein at length.

26. Defendant implied that the headlight would be created in a workmanlike manner and with the necessary knowledge, skill, care and ability.

27. Defendant breached this agreement when it improperly distributed and sold the headlight.

28. Defendant, by and through its agents, workmen and employees, was entrusted to distribute and sell products, including the headlight.

29. Plaintiff relied on eBay Inc.'s skill, judgment and implied warranties of fitness and merchantability, as well as the other warranties made by eBay Inc., with respect to the distribution and sale of the headlight.

30. Defendant, by and through its agents, workmen and employees, breached the above-mentioned express and/or implied warranties of fitness and merchantability by failing to distribute and sell the headlight and failing to ensure that the headlight did not malfunction during the course of normal use.

31. The headlight sold, distributed or otherwise placed into the stream of commerce by defendant failed during the course of normal use as more fully set forth herein.

32. As a direct and proximate result of the within described fire loss, Plaintiff's insureds sustained fire damages to their real and personal property, loss of use, and other fire related expenses, in an amount in excess of \$313,166.57.

33. Pursuant to its policy of insurance with its insured, Erie has paid to its insureds, and on their behalf, an amount in excess of \$313,166.57 and has become contractually and equitably subrogated to the rights of its insureds to the extent of such payments.

**WHEREFORE**, Plaintiff, Erie Insurance Company a/s/o Minh Nguyen and Anh Nguyen, demands judgment against Defendant, individually, jointly and/or severally for damages in an amount in excess of \$313,166.57, together with interest, costs of suit, and such other relief as this Honorable Court deems just and proper.

**COUNT IV – BREACH OF WARRANTY**  
**PLAINTIFF v. AMAZON.COM INC.**

34. Plaintiff hereby incorporates by reference each and every allegation contained in the above paragraphs as though the same were more fully set forth herein at length.

35. Defendant implied that the headlight would be created in a workmanlike manner and with the necessary knowledge, skill, care and ability.

36. Defendant breached this agreement when it improperly distributed and sold the headlight.



37. Defendant, by and through its agents, workmen and employees, was entrusted to distribute and sell its products, including the headlight.

38. Plaintiff relied on Amazon.com Inc.'s skill, judgment and implied warranties of fitness and merchantability, as well as the other warranties made by Amazon.com Inc., with respect to the distribution and sale of the headlight.

39. Defendant, by and through its agents, workmen and employees, breached the above-mentioned express and/or implied warranties of fitness and merchantability by failing to distribute and/or sell the headlight and failing to ensure that the headlight did not malfunction during the course of normal use.

40. The headlight sold, distributed or otherwise placed into the stream of commerce by defendant failed during the course of normal use as more fully set forth herein.

41. As a direct and proximate result of the within described fire loss, Plaintiff's insureds sustained fire damages to their real and personal property, loss of use, and other fire related expenses, in an amount in excess of \$313,166.57.

42. Pursuant to its policy of insurance with its insured, Erie has paid to its insureds, and on their behalf, an amount in excess of \$313,166.57 and has become contractually and equitably subrogated to the rights of its insureds to the extent of such payments.

**WHEREFORE**, Plaintiff, Erie Insurance Company a/s/o Minh Nguyen and Anh Nguyen, demands judgment against Defendant, individually, jointly and/or severally for damages in an amount in excess of \$313,166.57, together with interest, costs of suit, and such other relief as this Honorable Court deems just and proper.

**COUNT V – STRICT LIABILITY**  
**PLAINTIFF v. eBAY INC.**

43. Plaintiff hereby incorporates by reference each and every allegation contained in the above paragraphs as though the same were more fully set forth herein at length.

44. The headlight was unreasonably dangerous, defective and unsafe for its ordinary, foreseeable and intended use by reason of its propensity to fail during its ordinary, foreseeable and intended use, all as more fully outlined herein.

45. Defendant marketed, sold, distributed, or otherwise placed the headlight into the stream of commerce in an unreasonably dangerous, defective and unsafe condition as more fully outlined herein.

46. The failure of the headlight on April 25, 2014, and the losses and damages suffered by Plaintiff's insureds were the direct and proximate result of the unreasonably dangerous, defective and unsafe condition of the headlight marketed, sold and distributed by eBay Inc.

47. The headlight was defective and unreasonably dangerous at the time of sale because, when used in an intended or foreseeable manner, the product presented an unknowable and unacceptable danger to the average or ordinary consumer, such as Plaintiff's insureds.

48. The headlight failed the consumer expectation test in that the product did not perform as safely as an ordinary consumer, including Plaintiff, would have expected.

49. The headlight failed the risk balancing test in that a reasonable person would conclude the probability and seriousness of harm caused by the product outweighs the burden and costs of taking precautions against the harm.

50. The headlight was further defective in that it malfunctioned and failed to operate and function as intended even though it was not subject to abnormal use and there were no other reasonable secondary causes for the product's malfunction.

51. The headlight was unreasonably dangerous, defective and unsafe for its intended ordinary and foreseeable use as more fully set forth herein.

52. The headlight lacked adequate and necessary warnings and instructions regarding monitoring, use, cleaning, maintenance, testing, inspections, and care.

53. At the time of the fire loss alleged herein, the headlight was in the same condition as when it left the possession of and/or control of eBay Inc.

54. Plaintiff's insureds used the headlight for the purpose and in the manner intended and/or expected by eBay Inc.

55. As a direct and proximate result of the above-described fire loss, Plaintiff's insureds sustained fire damages as more fully set forth herein.

56. Pursuant to its policy of insurance with its insured, Erie has paid to its insured, and on their behalf, an amount in excess of \$313,166.57 and has become equitably and contractually subrogated to the rights of insured to the extent of such payments.

**WHEREFORE**, a/s/o Minh Nguyen and Anh Nguyen, demands judgment against Defendant, individually, jointly and/or severally for damages in an amount in excess of \$313,166.57, together with interest, costs of suit, and such other relief as this Honorable Court deems just and proper.

**COUNT VI – STRICT LIABILITY**  
**PLAINTIFF v. AMAZON.COM INC.**

57. Plaintiff hereby incorporates by reference each and every allegation contained in the above paragraphs as though the same were more fully set forth herein at length.

58. The headlight was unreasonably dangerous, defective and unsafe for its ordinary, foreseeable and intended use by reason of its propensity to fail during its ordinary, foreseeable and intended use, all as more fully outlined herein.

59. Defendant marketed, sold, distributed, or otherwise placed the headlight into the stream of commerce in an unreasonably dangerous, defective and unsafe condition as more fully outlined herein.

60. The failure of the headlight on April 25, 2014, and the losses and damages suffered by Plaintiff's insureds were the direct and proximate result of the unreasonably dangerous, defective and unsafe condition of the headlight marketed, sold and/or distributed by Amazon.com Inc.

61. The headlight was defective and unreasonably dangerous at the time of sale because, when used in an intended or foreseeable manner, the product presented an unknowable and unacceptable danger to the average or ordinary consumer, such as Plaintiff's insureds.

62. The headlight failed the consumer expectation test in that the product did not perform as safely as an ordinary consumer, including Plaintiff, would have expected.

63. The headlight failed the risk balancing test in that a reasonable person would conclude the probability and seriousness of harm caused by the product outweighs the burden and costs of taking precautions against the harm.

64. The headlight was further defective in that it malfunctioned and failed to operate and function as intended even though it was not subject to abnormal use and there were no other reasonable secondary causes for the product's malfunction.

65. The headlight was unreasonably dangerous, defective and unsafe for its intended ordinary and foreseeable use as more fully set forth herein.

66. The headlight lacked adequate and necessary warnings and instructions regarding monitoring, use, cleaning, maintenance, testing, inspections, and care.

67. At the time of the fire loss alleged herein, the headlight was in the same condition as when it left the possession of and/or control of Amazon.com Inc.

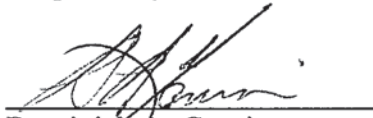
68. Plaintiff's insureds used the headlight for the purpose and in the manner intended and/or expected by Amazon.com Inc.

69. As a direct and proximate result of the above-described fire loss, Plaintiff's insureds sustained fire damages as more fully set forth herein.

70. Pursuant to its policy of insurance with its insured, Erie has paid to its insured, and on their behalf, an amount in excess of \$313,166.57 and has become equitably and contractually subrogated to the rights of insured to the extent of such payments.

**WHEREFORE**, a/s/o Minh Nguyen and Anh Nguyen, demands judgment against Defendant, individually, jointly and/or severally for damages in an amount in excess of \$313,166.57, together with interest, costs of suit, and such other relief as this Honorable Court deems just and proper.

Respectfully submitted,



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