

STATEMENT OF DAMAGES
G.L. c. 218, § 19A (a)

Docket No.: 10/4/10
1052CV1147
 Division: CIVIL B & DCS

Trial Court of Massachusetts
District Court Department



Plaintiff(s): ANDREA RUTHERFORD

Defendant(s): MIRCK, SHARP + DODDINS COLL. ET AL

INSTRUCTIONS: THIS FORM MUST BE COMPLETED AND FILED WITH THE COMPLAINT OR OTHER INITIAL PLEADING IN ALL DISTRICT COURT CIVIL ACTIONS SEEKING MONEY DAMAGES.

TORT CLAIMS	AMOUNT
A. Documented medical expenses to date:	
1. Total hospital expenses:	\$ _____
2. Total doctor expenses:	\$ _____
3. Total chiropractic expenses:	\$ _____
4. Total physical therapy expenses:	\$ _____
5. Total other expenses (Describe): _____	\$ _____
B. SUBTOTAL for lines 1-5 above:	\$ _____
C. Documented lost wages and compensation to date:	\$ _____
D. Documented property damages to date:	\$ _____
E. Reasonable anticipated future medical and hospital expenses:	\$ _____
F. Reasonably anticipated lost wages:	\$ _____
G. Other documented items of damage (Describe): _____	\$ _____
TOTAL TORT CLAIMS for lines B-G above:	\$ _____

For this form, disregard double or treble damage claims, indicate single damages only.

H. Brief description of Plaintiff's injury, including nature and extent of injury (Describe): _____

CONTRACT CLAIMS	AMOUNT
Provide a detailed description of claim(s): <u>REPAIR MANUFACTURED + SOLD CAR THAT WAS IMPLODED IN PLAINTIFF'S CAR AND CAUSED DAMAGE</u>	<u>COURT COSTS & EXPENSES & ATTORNS</u> \$ <u>10,000</u> \$ _____ \$ _____
TOTAL CONTRACT CLAIMS:	\$ <u>10,000</u>

For this form, disregard double or treble damage claims; indicate single damages only.

ATTORNEY FOR PLAINTIFF (OR PRO SE PLAINTIFF):
 Signature: Jim M. Wise
 Type Name: STEVEN M. WISE
 Address: 5195 New North TORRANCE
CONWAY SPRINGS, SC 29076
 Phone: 954-648-9864
 B.B.O.#: 531380
 Date: 10/1/10

DEFENDANT'S NAME AND ADDRESS & PHONE:
MIRCK, SHARP + DODDINS COLL
820 BOAR TAVERN ROAD
WEST TOWN, N.J.

DIGITAL ANGEL, INC
490 VILLAINS AVE.
SOUTH ST. PLYM, MN

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

District Court Dept.
Cambridge Division
No.

1052CV1147

Andrea Rutherford,
Plaintiff

v.

Merck Sharp & Dohme Corp. and Digital Angel, Inc.
Defendants

COMPLAINT

PARTIES

1. The plaintiff, Andrea Rutherford ("Rutherford"), is a natural person who resides at [REDACTED] Massachusetts [REDACTED]
2. The defendant, Merck Sharp & Dohme Corporation, Inc., is a corporation incorporated under the laws of New Jersey, with a principle place of business located at 820 Bear Tavern Road, West Trenton, New Jersey. It's predecessor, Merck and Company, merged with Schering-Plough Corporation ("Schering-Plough") in 2009. Until that merger, and at all times relevant, Schering-Plough Corporation was doing business as a New Jersey Corporation with its chief place of business located at 2000 Galloping Hill Road, Kenilworth, New Jersey.

3. The defendant, Digital Angel, Inc. ("Digital Angel"), is a corporation incorporated under the laws of the state of Delaware, with a principle place of business located at 490 Villaume Avenue, South St. Paul, Minnesota.

COUNT 1
(MERCK'S BREACH OF G.L. c. 106, sec. 2-314,
IMPLIED MERCHANTABILITY OF MERCHANTABILITY)

4. At all times pertinent, Rutherford was the guardian and owner of a cat named Bulkin.

5. On February 2, 2005, Dr. Paul Constantino of the South Bay Veterinary Group implanted a "Home Again" chip in Bulkin's body, which Rutherford purchased.

6. This "Home Again" chip was manufactured and/or distributed by Schering-Plough and Digital Angel.

6. At no time did Dr. Constantino, Schering-Plough, Digital Angel, or anyone else advise Rutherford that the "Home Again" chip could cause cancer in Bulkin or had ever caused in any living organism.

7. Had Rutherford known that the "Home Again" chip could possibly cause cancer in Bulkin, she would not have purchased it and would not have had it implanted in Bulkin.

8. Bulkin developed a lump in the area of the implanted chip.

9. On October 17, 2007, a veterinarian at the South Bay Veterinary Group excised the lump and sent it for analysis to Antec Diagnostics, Lake Success, New York.

10. On October 18, 2007, Antec Diagnostics determined that the lump was a fibrosarcoma of moderate malignancy, and located the implanted microchip in the center of the excised tissue.

11. Bulkin was immediately referred to the New England Veterinary Oncology Group.

12. On November 7, 2007, Dr. Michelle Silver, of the New England Veterinary Oncology Group, assessed Bulkin as having suffered a fibrosarcoma "likely from microchip" and recommended both chemotherapy and radiation to treat Bulkin's cancer.

13. Bulkin received both chemotherapy and radiation and, to date, is alive.

14. As a result of Schering-Plough's breach of the implied warranty of merchantability, Bulkin suffered cancer and Rutherford expended veterinary expenses for diagnosing, excising, and treating the cancer and will be required to spend more money to diagnose and treat any recurrence of the cancer.

COUNT 2
(DIGITAL ANGEL'S BREACH OF G.L. c. 106, sec. 2-314,
IMPLIED MERCHANTABILITY OF MERCHANTABILITY)

15. Rutherford realleges all previous paragraphs of this Complaint.

16. The acts and omissions of Digital Angel constitute breach of the implied warranty of merchantability under G.L. c. 106, sec. 2-314.

17. As a result of Digital Angel's breach of the implied warranty of merchantability, Bulkin developed cancer and Rutherford expended veterinary expenses for diagnosing, excising, and treating the cancer and will be required to spend more money to diagnose and treat any recurrence of the cancer.

COUNT 3
(SCHERING-PLOUGH'S BREACH OF G.L. c. 106, sec 2-315,
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY FOR A
PARTICULAR PURPOSE)

18. Rutherford realleges all previous paragraphs of this Complaint.

19. At the time of contracting, Schering-Plough had reason to know that the "Home Again" chip was to be used for the particular purpose of identifying Bulkin and that the buyer of the "Home Again" chip was relying on Schering-Plough's skill or judgment to furnish a safe and noncarcinogenic chip.

20. The acts and omissions of Schering-Plough constitute a breach of the implied warranty of merchantability for a particular purpose under G.L. c. 106, sec. 2-315.

21. As a result of Schering-Plough's breach of the implied warranty of merchantability for a particular purpose under G.L. c. 106, sec. 2-315, Bulkin developed cancer and Rutherford expended veterinary expenses for diagnosing, excising, and treating the cancer and will be required to spend more money to diagnose and treat any recurrence of the cancer.

COUNT 4
(DIGITAL ANGEL'S BREACH OF G.L. c. 106, sec 2-315
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY FOR A
PARTICULAR PURPOSE)

22. Rutherford realleges all previous paragraphs of this Complaint.

23. At the time of contracting, Digital Angel had reason to know that the "Home Again" chip was to be used for the particular purpose of identifying Bulkin and that the buyer of the "Home Again" chip was relying on Digital Angel's skill or judgment to furnish a safe and noncarcinogenic chip.

24. The acts and omissions of Digital Angel constitute a breach of the implied warranty of merchantability for a particular purpose under G.L. c. 106, sec. 2-315.

25. As a result of Digital Angel's breach of the implied warranty of merchantability for a particular purpose under G.L. c. 106, sec. 2-315, Bulkin developed cancer and Rutherford expended veterinary expenses for diagnosing, excising, and treating the cancer and will be required to spend more money to diagnose and treat any recurrence of the cancer.

COUNT 5
(SCHERING-PLOUGH'S BREACH OF CONTRACT)

26. Rutherford realleges all previous paragraphs of this Complaint.

27. Schering-Plough's acts and omissions constituted breach of contract..

28. As a result of Schering-Plough's breach of contract, Bulkin developed cancer and Rutherford expended veterinary expenses for diagnosing, excising, and treating the cancer and will be required to spend more money to diagnose and treat any recurrence of the cancer.

COUNT 6
(DIGITAL ANGEL'S BREACH OF CONTRACT)

29. Rutherford realleges all previous paragraphs of this Complaint.

30. Digital Angel's acts and omissions constituted breach of contract..

31. As a result of Digital Angel's breach of contract, Bulkin developed cancer and Rutherford expended veterinary expenses for diagnosing, excising, and treating the cancer.

DEMAND

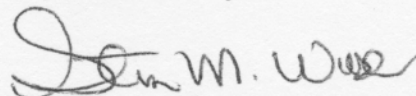
The plaintiff demands the following relief:

1. COUNT 1 - Reasonable compensatory damages and interest.
2. COUNT 2 - Reasonable compensatory damages and interest.
3. COUNT 3 - Reasonable compensatory damages and interest.
4. COUNT 4 - Reasonable compensatory damages and interest.
5. COUNT 5 - Reasonable compensatory damages and interest.
6. COUNT 6 - Reasonable compensatory damages and interest.

THE PLAINTIFF DEMANDS TRIAL BY JURY

DATED: OCTOBER 1, 2010

By her attorney:



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