

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CAMIS INCORPORATED

Plaintiff

and

FUJITSU LIMITED, and FUJITSU CANADA INC.  
~~and FUJITSU COMPUTER PRODUCTS OF AMERICA, INC.~~

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If you

wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local legal aid office.

Date

Issued by \_\_\_\_\_  
Local registrar

Address of court office:  
Ministry for the Attorney General  
London Court House  
Civil, Landlord/Tenant Section  
Group Floor, Unit "A"  
80 Dundas Street  
London Ontario  
N6A 6A3

TO: Fujitsu Canada Inc.  
6975 Creditview Road, Unit 1  
Mississauga, ON L5N 8E9

~~AND TO: Fujitsu Computer Products of America, Inc.  
2904 Orchard parkway  
San Jose, CA 95134-2009, U.S.A.~~

AND TO: Fujitsu Limited  
4-1-1 Kamikodanaka, Nakahara-ku,  
Kawasaki, Kanagawa 211-8588 Japan

## CLAIM

1. The Plaintiff, Camis Incorporated, on its own behalf and on behalf of others similarly situated claims:
  - (a) an order certifying this action as a class proceeding and appointing Camis Incorporated as the representative plaintiff;
  - (b) damages in the amount of \$20,000,000.00;
  - (c) punitive, aggravated, and exemplary damages in the amount of \$1,000,000.00;
  - (d) prejudgment interest in the amount of ten percent, compounded annually;
  - (e) costs of this action pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6 or alternatively, on a substantial indemnity basis; and
  - (f) such further and other relief as to this Honourable Court seems just.

## THE NATURE OF THE ACTION

2. This class action concerns the Defendants' ~~negligence relating to the~~ negligent design, manufacture, distribution, marketing, sale and/or servicing of the Fujitsu Magnetic Hard Disk Drive models in the Fujitsu MPG3 series (the "MPG3xx Hard Drives"). Where referred to herein, the MPG3xx Hard Drives are intended to refer to Fujitsu MPG3 series hard drives, whether sold as a component part of computer systems or as a separate "stand alone" hard drive.

## THE PLAINTIFF

3. Camis Incorporated ("Camis") is a Canadian corporation, carrying on business in systems integration. Camis purchased multiple MGP3xx Hard Drives for use in its computer systems.

## THE DEFENDANTS

~~4. Fujitsu Canada, Inc. and Fujitsu Computer Products of America Inc. are wholly owned subsidiaries of Fujitsu, Limited, a Japanese company headquartered in Tokyo, which is one of the world's leading suppliers of computer hardware, information technology and computer networking products and services. Where referred to herein, "Fujitsu" is intended to refer to both Fujitsu Canada, Inc. and Fujitsu Products of America Inc..~~

4. Fujitsu, Limited is a Japanese corporation with its principal place of business in Kawasaki, Japan. It is one of the world's leading suppliers of computer hardware including MPG3xx Hard drives, information technology and computer networking products and services.

5. Fujitsu Canada, Inc. maintains its head office in Mississauga, Ontario. The company sells, markets and services laptop computers and various peripheral devices including hard disk drives, scanners, keyboards and printers.

6. Fujitsu Computer Products of America Inc. maintains its head office at 2004 Orchard Parkway, San Jose, California. The company manufactures and markets notebook computers, scanners and other computer hardware products, including the MPG3xx Hard Drives.

7. Fujitsu Canada, Inc. is a wholly owned subsidiary of Fujitsu, Limited, Where referred to herein, "Fujitsu" is intended to refer to Fujitsu, Limited and Fujitsu Canada, Inc.

## **BACKGROUND**

8. A hard disk drive is a computer component which serves as the primary device for the storage of data. The hard disk drive contains one or more platters (flat disks) upon which data is stored in tracks and sectors. The platters rotate at high speed, driven by a spindle motor within the hard disk drive. Data is read from and written to the hard disk drive via read/write heads, which float above and below each platter as the platter spins. Because of the essential function that a hard disk drive plays in a computer system, its reliability is of critical importance.
9. The storage capacity of a hard disk drive is measured in terms of “bytes” of data, and is an important feature to the consumer market. Fujitsu has maintained its position as an aggressive competitor in the hard disk drive market by launching successive hard drive models with increasing storage capacity. The Fujitsu MPG3xx series, introduced in the fall of 2000, included hard drives with storage capacities ranging from 10.2 to 40.9 gigabytes. One gigabyte (“gb”) is equivalent to 1,073,741,824 bytes.
10. The Plaintiff, Camis Incorporated, purchased multiple MGP3xx Hard Drives for use in its computer systems supplied to various clients. In 2001, the Plaintiff began to experience problems with the MGP3xx Hard Drives. In particular, many of the MGP3xx Hard Drives were not recognized or detected by the system bios, which resulted in the failure of the drive to “boot up”. The Plaintiff was unable to access or retrieve the data stored on the hard drive. These hard drive failures were not repairable.

11. After several MPG3xx Hard Drive failures, the Plaintiff returned six of the defective drives to the Defendant, Fujitsu Canada, Inc. The drives were replaced with MPG3xx Hard Drives models containing the same defect. The Plaintiff, on the advice of a Fujitsu representative, updated the remaining Fujitsu MGP3xx Hard Drives with a firmware update in the fall of 2001. The firmware updates were unsuccessful however, and the hard drive failures persisted.
12. Other persons situated in Canada have experienced similar problems and have suffered the damages described hereinafter.

#### **NEGLIGENCE**

13. The Plaintiff states that the Defendants were negligent in the design, manufacture, marketing, sale, and/or servicing of MPG3xx Hard Drives by supplying drives in such condition that they do not perform the most basic and essential functions of a hard disk drive, including operating without failure and/or massive data loss.
14. The Plaintiff states that its damages have been caused by the negligence of the Defendants. Such negligence includes, but is not limited to the following:
- (a) the design of the MPG3xx Hard Drives was defective;
    - (i) the Defendants failed to maintain adequate quality control;
    - (ii) the Defendants failed to conduct adequate tests which would have indicated that the drives, or components thereof, would fail at an unacceptably high rate;

- (iii) the Defendants failed to conduct tests to determine whether the drives would perform within certain reliability specifications;
- (iv) the Defendants incorporated material and parts in the design of the MPG3xx Hard Drives which were inappropriate for the intended use;
- (b) the manufacture of the MPG3xx Hard Drives was defective;
- (i) the Defendants failed to maintain adequate quality control;
- (ii) the Defendants failed to conduct adequate tests which would have indicated that the drives, or components thereof, would fail at an unacceptably high rate;
- (iii) the Defendants failed to conduct tests to determine whether the drives would perform within certain reliability specifications;
- (c) the Defendants knowingly designed, manufactured, distributed, marketed, sold and/or serviced a product they knew or ought to have known was defective; and
- ~~(d) the Defendants failed to properly warn the Plaintiff and others similarly situated about the risk of failure associated with the MPG3xx Hard Drive or components thereof;~~
- ~~(e) the Defendants concealed material facts regarding the performance of the MPG3xx Hard Drives; and~~
- (d)(f) such further and other negligence which is within the knowledge of the Defendants.

15. Beginning in at least May, 2001, Fujitsu began receiving complaints about failing Hard Drives. By at least July, 2001, Fujitsu was aware that the Hard Drive failure was widespread. Despite Fujitsu's knowledge about the Hard Drive failure, it failed to properly

warn the Plaintiff and others similarly situated about the risk of failure associated with the MPG3xx hard Drive or components thereof and/or the need to "back up" their hard drives regularly. Indeed, Fujitsu concealed material facts regarding the performance of the MPG3xx Hard Drives.

16. The Defendants expressly and implicitly warranted that the MPG3xx Hard Drives were fit for the purpose intended, and that they were of merchantable quality. The Defendants are in breach of these express and implied warranties.
  
17. By its own admission, the Japanese parent company Fujitsu Ltd., has estimated that approximately 4.9 million Fujitsu hard drive chips are defective. Moreover, the parent company has determined that the failure rate of the semiconductor chip within the Fujitsu hard drives is in excess of all reasonable industry standards.
  
18. ~~The Plaintiff states that the Defendants were negligent in the design, manufacture, marketing, sale, and/or servicing of MPG3xx Hard Drives by supplying drives in such condition that they do not perform the most basic and essential functions of a hard disk drive, including operating without failure and/or massive data loss.~~
  
19. The MPG3xx Hard Drives have failed and/or are at risk of failing. Given the essential role of the hard disk drive to the storage of data and the overall functioning of a computer system, the inherent defect(s) in the MPG3xx Hard Drives have caused substantial damages.



## THE RESULTING DAMAGES

20. As a result of the Defendants' misconduct, the Plaintiff and others similarly situated have suffered damages including but not limited to:

- (a) the replacement and/or repair of defective MPG3xx Hard Drives;
- (b) the replacement of MPG3xx Hard Drives at risk of failing;
- (c) time loss and expenses associated with temporary and/or permanent data loss;  
and
- (d) time loss and expenses associated with retrieval of lost data.

21. The Plaintiff, and others similarly situated, have expended considerable time and resources in retrieving lost data. In some instances, the MGP3xx Hard Drive failures resulted in permanent data loss. The MPG3xx Hard Drive failures continue to occur.

22. The risk of further failures of MPG3xx Hard Drives has caused the Plaintiff, at its own considerable expense, to replace MPG3xx Hard Drives with reliable hard disk drives made by other manufacturers.

23. The Plaintiff states that the Defendants knew, or ought to have known, that the MPG3xx Hard Drives were defective and that they were failing at an unacceptably high rate. The Japanese parent company, Fujitsu Ltd., publicly addressed the problems with the MPG3xx Hard Drives in Japan and to the financial press.

24. Notwithstanding their knowledge of the serious deficiencies of the hard drives, the Defendants failed to warn their customers about the defects. Further, the Defendants,

knowing that the malfunctions may result in a loss of data, failed to warn their customers that they should be particularly vigilant about backing up their files.

25. The Plaintiff pleads that by virtue of the Defendants' knowing disregard for or reckless indifference to the rights of the Plaintiff and others similarly situated, the Plaintiff is entitled to recover aggravated, punitive, and exemplary damages.

26. The Plaintiff and others similarly situated have suffered, and will continue to suffer damages as a result of Fujitsu's negligence.

27. The Plaintiff pleads that all damage was sustained in Ontario.

#### **THE RELEVANT STATUTES**

28. The Plaintiff pleads and relies on the provisions of the *Class Proceedings Act, 1992*, S.O. 1992, c.6.

29. ~~The Plaintiff pleads and relies upon the provisions of the *Sale of Goods Act, R.S.O. 1990, Chapter S.1, as amended, and in particular, section 15 of the Act.*~~

30. The Plaintiff pleads and relies upon the provisions of the *Negligence Act, R.S.O. 1990, Chapter N.1, as amended.*

31. The Plaintiff states that the facts of this case entitle him to rely on the principle of *res ipsa loquitur*.

**THE PLACE OF TRIAL**

32. The Plaintiff proposes that this action be tried in the City of Guelph, in the Province of Ontario.

**SERVICE**

33. This originating process may be served without court order outside Ontario in that the claim is:

- (a) in respect of a tort committed in Ontario (Rule 17.02(g) of the *Rules of Civil Procedure*);
- (b) in respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (Rule 17.02(h) of the *Rules of Civil Procedure*);
- (c) against a person outside Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (Rule 17.02(o) of the *Rules of Civil Procedure*); and
- (d) against a person carrying on business in Ontario (Rule 17.02(p) of the *Rules of Civil Procedure*).

February 4, 2003

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N6A 3V8

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Solicitors for the Plaintiff

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT LONDON

**STATEMENT OF CLAIM**

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