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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

EDWIN W. HICKOX
1721 Baron Ct.
Port Orange, Florida 32128

LISA A. HICKOX
1721 Baron Ct.
Port Orange, Florida 32128

Plaintiffs,

v.

0001489-08

WILSON SPORTING GOODS COMPANY
8750 W. Bryn Mawr Ave.
Chicago, IL 60631

Civil Action No.

SERVE: United States Corporation Company:
2711 Centerville Road, Suite 400
Wilmington, DE 19808

and

AMER SPORTS CORPORATION
Mäkelänkatu 91
P.O. Box 130
FI-00610 Helsinki
FINLAND

FILED
CIVIL ACTIONS BRANCH
FEB 26 2008
SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
WASHINGTON, DC

Handwritten initials

SERVE: The Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

Defendants.

COMPLAINT FOR DAMAGES

**(Product Liability; Breach of Implied Warranty of Merchantability; Negligence —
Defective Design, Defective Manufacture, Failure to Warn; Willful and Wanton
Conduct; Breach of Implied Warranty of Fitness for a Particular Purpose;**

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1919 M Street, NW
Suite 350
Washington, D.C. 20036
202-463-3030

Case: 2008 CA 001489 B
0003065832
DT: CABCLF

**Punitive Damages: Serious and Permanent Injuries Resulting from Defective
Umpire's Mask; Loss of Consortium)**

JURISDICTION AND VENUE

1. Jurisdiction is vested in this court pursuant to D.C. Code Section 11-921 (1981 ed. as amended.)
2. Venue in this Honorable Court is proper, as the cause of action arose in the District of Columbia.

PARTIES

3. Plaintiffs Edwin W. Hickox and Lisa A. Hickox are adult citizens and residents of the State of Florida.
4. Upon information and belief, Defendant Wilson Sporting Goods Company ("Wilson") is a wholly owned subsidiary of Defendant Amer Sports Corporation ("Amer Sports") and is not licensed to do business in the District of Columbia.
5. Upon information and belief, prior to May 14, 2005, Defendant Wilson and Defendant Amer Sports designed, manufactured, inspected, marketed, distributed, sold and warranted to the general public throughout the United States and the District of Columbia and placed in the stream of commerce, umpires' masks known as Wilson's masks.
6. Upon information and belief, Defendant Amer Sports Corporation is a Finnish corporation not licensed to do business in the District of Columbia.

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7. Upon information and belief, prior to May 14, 2005, Defendant Wilson and Defendant Amer Sports designed, manufactured, inspected, marketed, distributed, sold and warranted to the general public throughout the United States and the District of Columbia and placed in the stream of commerce, umpires' masks known as Wilson's masks.

FACTS

8. Plaintiff umpired the Washington Nationals' May 14, 2005, game at RFK Stadium in Washington, DC.

9. On that night, Plaintiff wore an umpire's mask manufactured and/or sold by Defendant Wilson.

10. Just before midnight, a foul ball struck the throat guard of Plaintiff's mask.

11. The impact dislodged the mask's metal frame from the rest of the mask. The ball's force pushed the frame into Plaintiff's ear canal, then pushed the entire mask completely off of Plaintiff's head and onto the ground.

12. Plaintiff suffered numerous injuries, including but not excluding, a concussion, broken bones in his left ear, and an inner-ear fluid leak from his right ear.

13. Plaintiff's injuries forced him to miss substantial periods from work.

14. In October of 2005, Plaintiff underwent surgery to have the broken ear bone removed and replaced with a titanium prosthesis.

15. Despite that surgery and subsequent surgeries, Plaintiff's injuries dramatically reduced his left ear's hearing capacity.

COUNT I
(Product Liability – All Defendants)

16. Plaintiff hereby incorporates, by reference, paragraphs 1 through 15 above, and further states that at all times relevant herein, Defendants manufactured and/or sold the mask which Plaintiff was wearing at the time of his injury.

17. Plaintiff further alleges that when Plaintiff was injured, he was using the mask in an intended and reasonably foreseeable manner.

18. Plaintiff further alleges that an ordinary customer would expect the umpire's mask, built to protect the umpire's face from stray baseballs, not to harm Plaintiff when a baseball strikes the mask.

19. Plaintiff further alleges that Defendants were in the business of selling the mask which caused Plaintiff's injuries.

20. Plaintiff further alleges that the mask was defective when Defendants sold it or otherwise put it into the stream of commerce.

21. Plaintiff further alleges that the mask was not substantially changed before it reached him.

22. Plaintiff further alleges that the mask's defects were the direct and proximate cause of his injuries.

23. As a direct and proximate result of the defects in Defendants' product, Plaintiff sustained serious injuries. Plaintiff suffered permanent injuries, including but

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not limited to the loss of otherwise healthy ear bones and a drop in his hearing ability. Plaintiff has undergone several surgeries to treat injuries he suffered as a direct result of Defendants' product's defect.

24. As a further direct and proximate result of Defendants' product's defect, Plaintiff has suffered and will continue to suffer mental anguish, and has incurred and will continue to incur substantial expenses for medical care and treatment.

COUNT II

(Breach of Implied Warranty of Merchantability – All Defendants)

25. Plaintiff hereby incorporates, by reference, paragraphs 1 through 24 above, and further alleges that Defendants' umpire's mask was unfit for the ordinary purposes for which it was used, i.e., to protect the umpire's face from injury by baseballs.

26. Plaintiff further alleges that Defendants were merchants in the market for umpire's masks.

27. Plaintiff further alleges that the mask's unfitness for the job of protecting his head from injury was the direct and proximate cause of the injuries complained of herein.

28. As a direct and proximate result of the defects in Defendants' product, Plaintiff sustained serious injuries. Plaintiff suffered permanent injuries, including but not limited to the loss of otherwise healthy ear bones and a drop in his hearing ability. Plaintiff has undergone several surgeries to treat injuries he suffered as a direct result of Defendants' product's defect.

29. As a further direct and proximate result of Defendants' product's defect, Plaintiff has suffered and will continue to suffer mental anguish, and has incurred and will continue to incur substantial expenses for medical care and treatment.

COUNT III
**(Negligence — Design Defect,
Manufacturing Defect, Failure to Warn: All Defendants)**

30. Plaintiff hereby incorporates, by reference, paragraphs 1 through 29 and further alleges that Defendants owed a duty of reasonable care to Plaintiff and foreseeable users of the umpire's mask at issue with regard to the design, manufacture, assembly, testing, labeling, distribution, marketing, advertising, sale and warranty of the product.

31. Plaintiff further alleges that Defendants further owed to Plaintiff and other foreseeable users of Plaintiff's umpire's mask a duty to warn and/or adequately advise them of any deficiencies associated with the mask, and that said duty existed both at the time of sale and at all times leading up to the accident which forms the basis of this Complaint.

32. Plaintiff further alleges that Defendants knew or should have known that the aforementioned defect(s) created an unreasonable risk of harm to the purchaser and users of the mask, and should have warned of such.

33. Plaintiff further alleges that Defendants breached said duties in that Plaintiff's umpire's mask was unreasonably dangerous and defective in design and/or manufacture at the time it left Defendants' control, and Defendants failed to warn of

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such or fix such matter. The defects in Plaintiff's mask related to, among other things, its ability to maintain structural integrity when struck by a baseball, and to adequately protect its wearer's head and face when struck by a baseball.

34. As direct and approximate result of Defendants' aforesaid negligent acts and/or omissions, the mask at issue malfunctioned on May 14, 2005.

35. As a further direct and proximate result of Defendants' negligence, Plaintiff sustained serious injuries. Plaintiff suffered permanent injuries, including but not limited to the loss of otherwise healthy ear bones and a drop in his hearing ability. Plaintiff has undergone several surgeries to treat injuries he suffered as a direct result of Defendants' product's defect.

36. As a further direct and proximate result of Defendants' negligence, Plaintiff has suffered and will continue to suffer mental anguish, and has incurred and will continue to incur substantial expenses for medical care and treatment.

COUNT IV

(Gross Negligence; Willful and Wanton Conduct: All Defendants)

37. Plaintiff hereby incorporates, by reference, paragraphs 1 through 36 and further alleges that Defendants owed to Plaintiff, and other foreseeable users of the mask at issue, a duty to design, manufacture, assemble, test, label, distribute, market, advertise, sell and warrant the product in a manner that was not grossly, or willfully and wantonly, negligent, i.e., Defendants had a duty to avoid acting consciously in disregard of another person's rights or with a reckless indifference to the consequences to another person, while being aware of their conduct and also aware, from knowledge of existing

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circumstances and conditions, that said conduct could result in injury to others, including Plaintiff.

38. Plaintiff further alleges that Defendants further owed to Plaintiff and other foreseeable users of Plaintiff's mask a duty to warn and/or advise them, in a manner that was not grossly, or willfully and wantonly negligent, of any deficiencies associated with the mask, and that said duty existed both at the time of sale and at all times leading up to the accident which forms the basis of this Complaint.

39. Plaintiff further alleges that Defendants knew or should have known that the aforementioned defect(s) created an unreasonable, and/or gross and/or willful and wanton, risk of harm to the purchaser and users of the mask.

40. Plaintiff further alleges that Defendants breached said duties in that Plaintiff's umpire's mask was unreasonably dangerous and defective in design and/or manufacture at the time it left Defendants' control, and Defendants failed to warn of such or fix such matter. The defects in Plaintiff's mask related to, among other things, its ability to maintain structural integrity when struck by a baseball, and to adequately protect its wearer's head and face when struck by a baseball.

41. As direct and approximate result of Defendants' aforesaid gross negligence, and/or willful and wanton acts and/or omissions, the mask at issue malfunctioned on May 14, 2005.

42. As a further direct and proximate result of Defendants' gross negligence, Plaintiff sustained serious injuries. Plaintiff suffered permanent injuries, including but

not limited to the loss of otherwise healthy ear bones and a drop in his hearing ability. Plaintiff has undergone several surgeries to treat injuries he suffered as a direct result of Defendants' product's defect.

43. As a further direct and proximate result of Defendants' gross negligence, Plaintiff has suffered and will continue to suffer mental anguish, and has incurred and will continue to incur substantial expenses for medical care and treatment.

**COUNT V
(Breach of Express Warranty: All Defendants)**

44. Plaintiff incorporates, by reference, paragraphs 1 through 43 and further states as follows:

45. Plaintiff further alleges that Defendants and their agents, including retailers, under § 28:2-313 of the Code of the District of Columbia, expressly warranted via their marketing, advertisements, warranties, sales literature, owners manuals, and other representations that their product(s) and in particular the mask at issue was fit for the purpose for which it was intended, namely head and face protection for baseball umpires.

46. Plaintiff further alleges that Defendants breached said express warranties and the aforesaid code section by failing to provide a product free from design and/or manufacturing defects, rendering it unsafe for its intended use(s), as described in detail above.

47. As a direct and proximate result of Defendants' breach of warranty, Plaintiff sustained serious injuries. Plaintiff suffered permanent injuries, including but

not limited to the loss of otherwise healthy ear bones and a drop in his hearing ability. Plaintiff has undergone several surgeries to treat injuries he suffered as a direct result of Defendants' product's defect.

48. As a further direct and proximate result of Defendants' breach of warranty, Plaintiff has suffered and will continue to suffer mental anguish, and has incurred and will continue to incur substantial expenses for medical care and treatment.

COUNT VI
**(Breach of Warranty & Implied Warranty
of Fitness for Particular Purpose: All Defendants)**

49. Plaintiff incorporates, by reference, paragraphs 1 through 48 and further alleges that Defendants had a duty pursuant to express and implied warranty(ies) of fitness for particular purpose under District of Columbia Code § 28:2-315, and other similar provisions.

50. Plaintiff further alleges that Defendants had reason to know of the particular needs of Plaintiff because those needs were communicated and specified to Defendants and/or employees and/or agents and/or representatives and/or authorized dealers of Defendants, and that this knowledge was known at the time of the purchase of the mask and thereafter. By reason of such knowledge, there was an, or were, implied warranty(ies) that Plaintiff's mask was fit for the particular purpose(s) of allowing Plaintiff to safely perform his job of umpiring baseball games, and constituted part of the bargain between the parties. Defendants had reason to know that Plaintiff Hickox

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was relying upon Defendants' superior knowledge, skill and judgment in selecting a proper mask for him.

51. Plaintiff further alleges that by failing to manufacture the mask to ensure its proper operation, Defendants breached said implied warranty(ies) and the aforesaid code sections by failing to provide a product free from design and/or manufacturing defects, rendering it unsafe for its intended and/or known and/or specified use(s).

52. Plaintiff further alleges that Plaintiff is in the class of persons who are/were reasonably expected to use, consume, or be affected by the mask at issue.

53. As a direct and proximate result of Defendants' breach of warranty, Plaintiff sustained serious injuries. Plaintiff suffered permanent injuries, including but not limited to the loss of otherwise healthy ear bones and a drop in his hearing ability. Plaintiff has undergone several surgeries to treat injuries he suffered as a direct result of Defendants' product's defect.

54. As a further direct and proximate result of Defendants' breach of warranty, Plaintiff has suffered and will continue to suffer mental anguish, and has incurred and will continue to incur substantial expenses for medical care and treatment.

COUNT VII
(Punitive Damages: All Defendants)

55. Plaintiff incorporates, by reference, paragraphs 1 through 54 and further alleges that Defendants acted with actual malice toward Plaintiff or acted under circumstances amounting to a willful and wanton disregard of Plaintiff's rights, such that an award of punitive damages to Plaintiff to punish Defendants for their actions and

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to serve as example to prevent others from acting in a similar way, is appropriate here, especially because the acts necessary for Defendants to have designed and/or manufactured the umpire's mask in a safe fashion, and/or inspected and/or fixed the mask, and/or to have otherwise remedied the dangers attendant to the mask's then-existing condition, and/or to have provided a warning to Plaintiff of said dangers, could have been accomplished at minimal cost to Defendants. All of the acts and/or omissions giving rise to the liability of Defendants were done by Defendants, and/or at the behest of Defendants, and/or on behalf of Defendants, and/or were ratified by Defendants and/or the appropriate corporate employees, officers and/or representatives of Defendants.

56. As a direct and proximate result of Defendants' conduct, Plaintiff sustained serious injuries. Plaintiff suffered permanent injuries, including but not limited to the loss of otherwise healthy ear bones and a drop in his hearing ability. Plaintiff has undergone several surgeries to treat injuries he suffered as a direct result of Defendants' product's defect.

57. As a further direct and proximate result of Defendants' conduct, Plaintiff has suffered and will continue to suffer mental anguish, and has incurred and will continue to incur substantial expenses for medical care and treatment.

COUNT VIII
(Loss of Consortium: All Defendants)

58. Plaintiff Lisa A. Hickox incorporates, by reference, paragraphs 1 through 57 above and further alleges that she is the wife of Plaintiff Edwin W. Hickox.

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59. Plaintiff Lisa A. Hickox further alleges that as direct and proximate result of the negligent, intentional and/or harmful acts of the Defendants as previously described, she has spent considerable time caring for and assisting her husband during from the time of the incident to the present.

60. As a direct and proximate result of this incident, Plaintiff Lisa A. Hickox has sustained losses of society, companionship and consortium.

WHEREFORE, Plaintiff Edwin Hickox demands judgment in compensatory damages against Defendants, jointly and severally, in the full and just amount of Two Million Dollars (\$2,000,000.00), plus interest and costs.

WHEREFORE, Plaintiff Edwin Hickox demands judgment in exemplary damages against Defendants, jointly and severally, in the full and just amount of Two Million Dollars (\$2,000,000.00), plus interest and costs.

WHEREFORE, Plaintiff Lisa A. Hickox demands judgment in compensatory damages against Defendants, jointly and severally, in the full and just amount of Two Hundred Thousand Dollars (\$200,000.00), plus interest and costs.

JURY TRIAL DEMAND

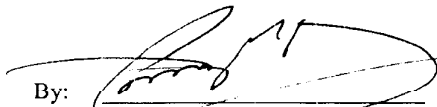
Plaintiff requests a trial by jury on all of the above claims.

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Respectfully submitted,

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