

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN

JEFFREY CHARLES BONDY and
NICOLAS JOHN MacPHERSON

Plaintiffs

and

TOSHIBA OF CANADA LIMITED and
TOSHIBA CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM
(Notice of Action issued on October 31, 2003)

CLAIM

1. THE PLAINTIFFS, Jeffrey Charles Bondy ("Bondy") and Nicolas John MacPherson ("MacPherson") (together "the plaintiffs"), on their own behalf and on behalf of all persons in Canada who purchased a Toshiba Satellite 5000 series computer notebook (the "Class"), claim:

- (a) an order certifying this action as a class proceeding and appointing the plaintiffs as the representative plaintiffs;
- (b) damages in the amount of \$15,000,000;
- (c) punitive, aggravated and exemplary damages in the amount of \$1,000,000;

Amended this 25th day of FEBRUARY 2005 pursuant
to the Rule 26.02(A) C. Haines registrar at Windsor per.

- (d) an order directing a reference or such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (e) pre-judgment interest and post-judgment interest pursuant to the *Courts of Justice Act*;
- (f) costs of this action on a substantial indemnity basis plus GST; and
- (g) such further and other relief as to this Honourable Court seems just.

THE NATURE OF THE ACTION

2. This class action concerns the defendants' negligent design, manufacture, distribution, marketing, sale and/or servicing of the Satellite 5000 series consumer computer notebook (the "Notebook"). The defendants marketed the Notebook as "*the ultimate multimedia machine*" and as offering 1.1 GHz Pentium III processing power. In reality, the Notebook overheats, fails to perform at 1.1 GHz processing speed and shuts down.

THE PLAINTIFFS

3. Bondy is a 20-year-old computer science student residing in the Town of Amherstburg, Province of Ontario. In April 2002, he purchased a Notebook, model X1Z, from Staples at a purchase price of \$2,999 plus tax.

4. MacPherson is a 25-year-old systems administrator who resides in the City of Windsor, Province of Ontario. He also studies computer science on a part-time

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- (e) pre-judgment interest and post-judgment interest pursuant to the *Courts of Justice Act*;
- (f) costs of this action on a substantial indemnity basis plus GST; and
- (g) such further and other relief as to this Honourable Court seems just.

THE NATURE OF THE ACTION

2. This class action concerns ~~the defendants' negligent design, manufacture, distribution, marketing, sale and/or servicing of a shoddy, expensive computer designed, manufactured and distributed by Toshiba of Canada Limited ("Toshiba Canada") and its Japanese parent company, Toshiba Corporation ("Toshiba").~~ The defendants alone are responsible for the defects in the Satellite 5000 series consumer computer notebook (the "Notebook"). The defendants marketed the Notebook as "*the ultimate multimedia machine*" and as offering 1.1 GHz Pentium III processing power. In reality, from the time of purchase, the Notebook overheated overheats, failed fails to perform at 1.1 GHz processing speed and repeatedly shuts-down.

THE PLAINTIFFS

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basis at St. Clair College. In March 2002, MacPherson purchased his Notebook, model X1Z, from The Future Shop at a purchase price of \$2,899 plus tax.

5. Both Bondy and MacPherson have been unable to use their Notebooks at the performance levels that a Pentium III 1.1 GHz computer would normally provide. They have encountered problems of sluggish performance, lockups, stalling and shut downs when utilizing their Notebooks.

THE DEFENDANTS

6. Toshiba of Canada Limited ("Toshiba Canada") is a federally incorporated company with its head office in Markham, Ontario. It is a wholly-owned subsidiary of Toshiba Corporation. It maintains offices in several cities across Canada and, at all material times, it distributed the Notebook.

7. Toshiba Corporation ("Toshiba") is a Japanese corporation with its principal place of business in Tokyo, Japan. It has over 30 production facilities and 364 consolidated subsidiaries worldwide. Toshiba is a publicly-traded company listed on eleven stock exchanges.

8. The plaintiffs' Notebooks were designed, tested and manufactured in Japan by Toshiba.

4. MacPherson is a 25-year-old systems administrator who resides in the City of Windsor, Province of Ontario. He also studies computer science on a part-time basis at St. Clair College. In March 2002, MacPherson purchased his Notebook, model X1Z, from The Future Shop at a purchase price of \$2,899 plus tax.

5. Both Bondy and MacPherson have been unable to use their Notebooks at the performance levels that a Pentium III 1.1 GHz computer would normally provide. They have encountered problems of sluggish performance, lockups, stalling and shut downs when utilizing their Notebooks. Both Bondy and MacPherson submitted their Notebooks to Toshiba Canada for repair or replacement within one year of purchasing their Notebooks, but Toshiba Canada failed to repair or replace the Notebooks in accordance with its one-year warranty.

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9. Toshiba is one of the world's leading manufacturers of computers and other computer products. From approximately October 2001 to July 2002, Toshiba and Toshiba Canada designed, manufactured, distributed, marketed and advertised the Notebook product line. In Canada, the defendants offered two models in the Satellite 5000 Series: X1Z and Z59. In the United States, Toshiba marketed the Notebook as Series 5005 but it is otherwise identical to the notebooks at issue in this action.

THE NOTEBOOKS

10. The defendants advertised the Notebooks as the "*ultimate multimedia machine*" because both the X1Z and Z59 models were equipped with powerful Intel Pentium III 1.1 GHz processors and because multimedia computer applications require such high levels of processing power.

11. With 1.1 GHz processing power, the Notebook theoretically provided greater processing speed than most other portable notebook computers of its time. Processing speed at this level in a computer notebook was especially attractive to consumers who wanted portable access to multimedia presentations and three-dimensional gaming. Consumers paid a premium price for this theoretical high performance.

12. The particular Pentium III 1.1 GHz processors used by the defendants in the Notebook were designed by Intel for use in desktop computers as opposed to notebook computers. Desktop processors generate more heat than notebook processors.

consolidated subsidiaries worldwide. Toshiba is a publicly-traded company listed on eleven stock exchanges.

8. The plaintiffs' Notebooks were designed, tested and manufactured either in Japan by Toshiba, or in Canada by Toshiba Canada.

9. Toshiba is one of the world's leading manufacturers of computers and other computer products. From approximately October 2001 to July 2002, Toshiba and Toshiba Canada designed, manufactured, distributed, marketed and advertised the Notebook product line and, also, licenced authorized retailers and distributors to market and sell them on their behalf. In Canada, the defendants offered two models in the Satellite 5000 Series: X1Z and Z59. In the United States, Toshiba marketed the Notebook as Series 5005 but it is otherwise identical to the notebooks at issue in this action.

THE NOTEBOOKS

10. The defendants advertised the Notebooks as the "*ultimate multimedia machine*" because both the X1Z and Z59 models were equipped with powerful Intel Pentium III 1.1 GHz processors and because multimedia computer applications require such high levels of processing power.

11. With 1.1 GHz processing power, the Notebook theoretically provided greater processing speed than most other portable notebook computers of its time.

Moreover, the greater the processing power, the more heat that is generated by the processor.

13. In a desktop computer, there is more room to dissipate the processor's heat than is available in a much smaller notebook computer. Other companies such as Dell and Gateway designed, manufactured and sold notebook computers using a Pentium III desktop computer processor in their notebook computers at the same time as the Notebooks were sold, but these competitors' notebook computers did not suffer from the same performance problems that are at issue in this action.
14. The Notebooks fail to perform at performance levels associated with a Pentium III 1.1 GHz computer because the design of the computer renders the computers incapable of adequately dissipating the heat generated by the Pentium III processor. As a result, overheating significantly impairs performance and causes unexpected shut downs of the computers.
15. The plaintiffs and other persons in Canada complained to Toshiba Canada about the performance problems they were experiencing with their Notebooks. The defendants' solution was to post a series of BIOS updates on the Toshiba website. The BIOS updates, however, do not resolve the performance issues and processor speed impairment. Rather, the BIOS updates merely reduce the processor speed so that the amount of heat generated by the processor is limited. The BIOS updates render the Notebook incapable of performing at 100% of its 1.1 GHz processor speed capacity. In

Processing speed at this level in a computer notebook was especially attractive to consumers who wanted portable access to multimedia presentations and three-dimensional gaming. Consumers paid a premium price for this theoretical high performance.

12. The particular Pentium III 1.1 GHz processors used by the defendants in the Notebook were designed by Intel for use in desktop computers as opposed to notebook computers. Desktop processors generate more heat than notebook processors. Moreover, the greater the processing power, the more heat that is generated by the processor.

13. In a desktop computer, there is more room to dissipate the processor's heat than is available in a much smaller notebook computer. Other companies such as Dell and Gateway designed, manufactured and sold notebook computers using a Pentium III desktop computer processor in their notebook computers at the same time as the Notebooks were sold, but these competitors' notebook computers did not suffer from the same performance problems that are at issue in this action.

14. The Notebooks fail to perform at performance levels associated with a Pentium III 1.1 GHz computer because the design of the computer renders the computers incapable of adequately dissipating the heat generated by the Pentium III processor. As a result, overheating significantly impairs performance and causes unexpected shut downs of the computers.

effect, the BIOS updates cripple the processor, particularly when running processor intensive tasks.

16. The defendants were negligent in the design, manufacture, marketing, sale and servicing of the Notebooks in that:

- (a) they failed to adequately design, manufacture and test the Notebooks;
- (b) they knew or ought to have known that the Notebook could and would overheat;
- (c) they knew or ought to have known that the Notebooks failed to perform to the maximum level expected of a Pentium III 1.1 GHz computer because of overheating and failed to rectify this defect;
- (d) they failed to prevent the problem of overheating associated with the Pentium III processor without limiting processing performance;
- (e) they failed to heed industry reports that desktop processors in notebook computers generate more heat that threatens processing performance;
- (f) they failed to alter the design of the Notebooks to dissipate the additional heat;
- (g) they failed to design and install a more efficient heatsink;
- (h) they failed to install a bigger fan;
- (i) they designed the Notebooks to deliver performance associated with a Pentium III 1.1 GHz processor and the Notebooks failed to do so;
- (j) they failed to conduct adequate tests to determine whether the Pentium III processor might overheat at certain performance levels;
- (k) they failed to conduct adequate tests which would have indicated the Notebooks would fail to perform at the level associated with a Pentium III 1.1 GHz processor;
- (l) they knowingly designed, manufactured, distributed, marketed, sold and/or serviced the Notebook which they knew or ought to have known was defective;

15. The plaintiffs and other persons in Canada complained to Toshiba Canada about the performance problems they were experiencing with their Notebooks. The defendants' solution was to post a series of Basic Input Output System ("BIOS") updates on the Toshiba website. The BIOS updates, however, do not resolve the performance issues and processor speed impairment. Rather, the BIOS updates merely reduce the processor speed so that the amount of heat generated by the processor is limited. The BIOS updates render the Notebook incapable of performing at 100% of its 1.1 GHz processor speed capacity. In effect, the BIOS updates cripple the processor, particularly when running processor intensive tasks.

NEGLIGENCE

16. The plaintiffs plead that the defendants owed them, and all Class Members, a duty of care to ensure that the Notebooks were of merchantable quality and fit for their intended purpose, namely, to perform in accordance with their stated performance specifications.

17. The defendants have acknowledged the existence of this duty of care by, among other things:

- (a) adopting and implementing a business plan to establish goodwill through branding the Toshiba name by way of direct consumer advertising;
- (b) addressing the performance problems with the Notebooks as opposed to requiring that their retailers or distributors fix the problems;

- (m) they offered the BIOS updates as a "solution" which they knew reduced the processing speed to levels far below the speed at which the Notebooks were advertised to perform;
- (n) they designed, developed, tested, manufactured, licensed, assembled, distributed and sold the Notebooks knowing they were incapable of functioning continuously at maximum performance;
- (o) they failed to control or monitor the functioning of the Notebooks which they designed, developed, tested, manufactured, licensed, assembled, distributed and sold;
- (p) they failed to warn the Class Members about the defects in the Notebooks;
- (q) they failed to promptly change the design when they knew or ought to have known that the Notebooks were capable of overheating and shutting down;
- (r) they failed to change their design, manufacturing and assembly process in a reasonable and timely manner only because they wished to use up their existing inventory of Notebooks;
- (s) they foresaw that the Notebooks would overheat but they failed to consider how the Notebooks might be designed or modified to eliminate this foreseeable risk;
- (t) they consciously accepted the risk of the Notebooks malfunctioning;
- (u) they failed to attach a warning or warning label to the Notebooks alerting users to the risk of the possible overheating and shut down;
- (v) they failed to carry out any or any adequate field survey to determine the quality of the Notebooks;
- (w) they failed to develop any or any appropriate method for testing the Notebooks before they manufactured, licensed, assembled, distributed and sold them;
- (x) they failed to establish any or any adequate procedure to educate their distributors' sales and service representatives or the ultimate users;

- (c) attempting to resolve the performance problems with the Notebooks by posting BIOS updates on their websites, to be accessed or downloaded directly by Class Members; and
- (d) expressly stating in their one-year warranty that the Class Members had “purchas[ed] a notebook computer from Toshiba of Canada Limited [TCL]” and that the Notebooks were “marketed and sold by TCL and its Authorized Distributors and Resellers.”

18. The defendants were negligent in the design, manufacture, marketing, sale and servicing of the Notebooks in that:

- (a) they failed to adequately design, manufacture and test the Notebooks;
- (b) they knew or ought to have known that the Notebook could and would overheat;
- (c) they knew or ought to have known that the Notebooks failed to perform to the maximum level expected of a Pentium III 1.1 GHz computer because of overheating and failed to rectify this defect;
- (d) they failed to prevent the problem of overheating associated with the Pentium III processor without limiting processing performance;
- (e) they failed to heed industry reports that desktop processors in notebook computers generate more heat that threatens processing performance;
- (f) they failed to alter the design of the Notebooks to dissipate the additional heat;
- (g) they failed to design and install a more efficient heatsink;
- (h) they failed to install a bigger fan;
- (i) they designed the Notebooks to deliver performance associated with a Pentium III 1.1 GHz processor and the Notebooks failed to do so;
- (j) they failed to conduct adequate tests to determine whether the Pentium III processor might overheat at certain performance levels;
- (k) they failed to conduct adequate tests which would have indicated the Notebooks would fail to perform at the level associated with a Pentium III 1.1 GHz processor;

- (y) they failed to establish any or any adequate procedure to ensure that possible design defects in the Notebooks were discovered and users' complaints were transmitted to them from the customers, sales representatives or distributors;
- (z) they failed to establish any or any adequate procedure for evaluating customers' complaints about the Notebooks;
- (aa) they failed to repair the Notebooks that Class Members gave to the defendants and/or the defendants' agents for servicing;
- (bb) they failed to accurately, candidly, promptly and truthfully disclose the defective nature of the Notebooks;
- (cc) they failed to identify, implement and verify that procedures were in place to address design problems, complaint handling, timely field notification and lack of control over Notebook failures;
- (dd) they failed to implement adequate performance specifications for the Notebooks;
- (ee) they failed to conduct in-process and finished device testing to ensure performance specifications for the Notebooks were met;
- (ff) they failed to adequately define or control written manufacturing specifications, processing, procedures and controls for the Notebooks;
- (gg) they failed to conform with good manufacturing practices;
- (hh) their quality assurance program failed to identify, recommend or provide adequate solutions for the Notebooks' problem;
- (ii) they failed to change their design, manufacturing and assembly process of the Notebooks in a reasonable and timely manner;
- (jj) they hired incompetent personnel and appointed incompetent officers and directors; and
- (kk) they failed to properly supervise their employees, their subsidiaries and associate and affiliated corporations.

- (l) they knowingly designed, manufactured, distributed, marketed, sold and/or serviced the Notebook which they knew or ought to have known was defective;
- (m) they offered the BIOS updates as a “solution” which they knew reduced the processing speed to levels far below the speed at which the Notebooks were advertised to perform;
- (n) they designed, developed, tested, manufactured, licensed, assembled, distributed and sold the Notebooks knowing they were incapable of functioning continuously at maximum performance;
- (o) they failed to control or monitor the functioning of the Notebooks which they designed, developed, tested, manufactured, licensed, assembled, distributed and sold;
- (p) they failed to warn the Class Members about the defects in the Notebooks;
- (q) they failed to promptly change the design when they knew or ought to have known that the Notebooks were capable of overheating and shutting down;
- (r) they failed to change their design, manufacturing and assembly process in a reasonable and timely manner only because they wished to use up their existing inventory of Notebooks;
- (s) they foresaw that the Notebooks would overheat but they failed to consider how the Notebooks might be designed or modified to eliminate this foreseeable risk;
- (t) they consciously accepted the risk of the Notebooks malfunctioning;
- (u) they failed to attach a warning or warning label to the Notebooks alerting users to the risk of the possible overheating and shut down;
- (v) they failed to carry out any or any adequate field survey to determine the quality of the Notebooks;
- (w) they failed to develop any or any appropriate method for testing the Notebooks before they manufactured, licensed, assembled, distributed and sold them;
- (x) they failed to establish any or any adequate procedure to educate their distributors’ sales and service representatives or the ultimate users;

17. By virtue of the acts and omissions described above, the defendants were negligent and in breach of their warranty to each Class Member that the Notebooks were fit for their intended purpose and were of merchantable quality.

DAMAGES

18. As a result of the negligence particularized above in the Notebooks, the plaintiffs and Class members have suffered the following damages:

- (a) they have encountered and continue to encounter the performance problems described in paragraph 14 and 15, above;
- (b) they have been required to shut down their computers repeatedly or, if the shut downs were automatic, to start up their computers with concomitant loss of time and data;
- (c) they have been and will be unable to run many computer programs that require the processing speed for which the Notebooks were designed and marketed to support;
- (d) they have lost the use of their Notebooks temporarily when forced to bring in their computers for servicing;
- (e) they did not get what they paid for;
- (f) they have suffered loss of time and expenses associated with temporary and/or permanent data loss, and will continue to do so;
- (g) they have suffered loss of time and expenses associated with implementing the BIOS updates, and will continue to do so;
- (h) they have suffered loss of time and expenses associated with troubleshooting and attempting to repair the performance problems, and will continue to do so;

- (y) they failed to establish any or any adequate procedure to ensure that possible design defects in the Notebooks were discovered and users' complaints were transmitted to them from the customers, sales representatives or distributors;
- (z) they failed to establish any or any adequate procedure for evaluating customers' complaints about the Notebooks;
- (aa) they failed to repair the Notebooks that Class Members gave to the defendants and/or the defendants' agents for servicing;
- (bb) they failed to accurately, candidly, promptly and truthfully disclose the defective nature of the Notebooks;
- (cc) they failed to identify, implement and verify that procedures were in place to address design problems, complaint handling, timely field notification and lack of control over Notebook failures;
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- (hh) their quality assurance program failed to identify, recommend or provide adequate solutions for the Notebooks' problem;
- (ii) they failed to change their design, manufacturing and assembly process of the Notebooks in a reasonable and timely manner;
- (jj) they hired incompetent personnel and appointed incompetent officers and directors; and
- (kk) they failed to properly supervise their employees, their subsidiaries and associate and affiliated corporations.

19. By virtue of the acts and omissions described above, the defendants were negligent and in breach of their warranty to each Class Member that the Notebooks were

- (i) they have had to purchase other computers to perform the processor-intensive tasks that the Notebooks should have been, but are unable, to perform; and
- (j) they own a computer for which they overpaid.

19. The plaintiffs plead that by virtue of the defendants' knowing disregard for or reckless indifference to the rights of the plaintiffs and others similarly situated, the plaintiffs are entitled to recover aggravated, punitive and exemplary damages.

20. The plaintiffs plead that all of their damage was sustained in Ontario.

THE RELEVANT STATUTES

21. The plaintiffs plead and rely upon the provisions of the *Class Proceedings Act, 1992* and the *Negligence Act, R.S.O. 1990, c. N.1*, all as amended.

PLACE OF TRIAL

22. The plaintiffs propose that this action be tried in the City of Windsor, Province of Ontario.

fit for their intended purpose and were of merchantable quality and liable to the plaintiffs and the Class Members for the damage they suffered as a consequence.

BREACH OF MANUFACTURER'S WARRANTY

20. The defendants, or one of them, supplied a one-year manufacturer's warranty to each Class Member concurrently with the purchase of every Notebook. The warranty read in part:

Within Canada, your warranty begins from the day you purchase your Toshiba Notebook Computer. ...

WHAT YOUR LIMITED WARRANTY PROVIDES

Toshiba of Canada Limited (TCL) warrants this Toshiba Notebook Computer to be free from defects in workmanship and material under normal use for the period of one (1) year from the date of purchase. ...

Should the product fail during normal and proper use within the warranty period, Toshiba will, at its option, repair or replace the defective part. This warranty does not include failure caused by improper installation, operation, cleaning or maintenance, accident, damage, misuse, abuse, non-Toshiba modifications to the product, improper connection with any peripheral, external, electrical fault, software faults, normal wear and tear or any other event, act, or omission outside Toshiba's control.

Your sole remedy shall be repair or replacement as provided above. In no event will TCL, Toshiba Corporation, or any Dealer, Distributor, Reseller or Authorized Service Provider/Partner be liable for any damages in excess of the purchase price of the product.

This warranty is in lieu of all other warranties by TCL expressed or implied, including, without limitation, the warranties of merchantability and fitness for particular purpose applied for the period of the warranty. The equipment covered by this warranty is marketed and sold by TCL and its Authorized Distributors and Resellers.

21. The defendants breached the manufacturer's warranty by failing to repair the cooling systems in the Notebooks such that they could perform in accordance with their specifications, and by refusing to replace the Notebooks. As a result of the complete failure by the defendants to honour their warranty commitments, and because the design defects causing the Notebook performance failures could not be remedied

SERVICE

23. 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));
- (b) in respect of damages sustained in Ontario arising from a tort or breach of contract however committed (rule 17.02(h));
- (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)); and
- (d) against a person carrying on business in Ontario (rule 17.02(p)).

December 1, 2003

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Solicitors for the plaintiffs

other than by redesigning the Notebook itself, the plaintiffs and Class Members are entitled to damages in the full amount of the purchase price paid for their Notebooks.

BREACH OF S. 52 OF THE COMPETITION ACT

22. Toshiba and Toshiba Canada repeatedly stated on the packaging and other materials that the the Notebook had 1.1 GHz processing power and was the “ultimate multimedia machine” (the “Representation”). The defendants breached subsection 52(1) of the *Competition Act* (Canada) in that the Representation was made repeatedly for the purpose of promoting, directly or indirectly, both the supply and sale of the Notebooks throughout Canada as well as the business interests of the defendants.

23. The defendants’ Representation was made to the public and was:

- (a) false or misleading in a material respect; and
- (b) a statement relating to the Notebooks’ performance capabilities that was not based on adequate and proper tests.

24. Pursuant to subsections 52(1) and 36(1) of the *Competition Act* (Canada), the defendants are liable to pay to the Class Members \$15,000,000, being an amount equal to the loss or damage suffered by them as a result of conduct that is contrary to subsection 52(1); \$50,000, being the full cost of all investigations in connection with this action; and the costs of this action on a substantial indemnity basis.

NEGLIGENT MISREPRESENTATION

25. The plaintiffs plead that a special relationship existed between the Class members and the defendants sufficient to give rise to a duty of care on the part of the defendants to exercise reasonable care and diligence in making the Representation about the Notebook. It was foreseeable that the Class members would rely on the Representation in deciding whether to purchase the Notebook at the price for which it was sold. The defendants made the Representation intending for the Class members to rely on it, and the Class members did so to their detriment by, among other things, purchasing the Notebooks.

26. The defendants' Representation was materially false because the Notebooks could not perform in accordance with the usual levels of a Pentium III 1.1 GHz computer. The Representation was made negligently and was, in law, a negligent misrepresentation. Particulars of the defendants' acts and omissions are described in paragraph 18, above.

DAMAGES

27. As a result of the negligence and breaches particularized above in the Notebooks, the plaintiffs and Class members have suffered the following damages:

- (a) they have encountered and continue to encounter the performance problems described in paragraph 14 and 15, above;
- (b) they have been required to shut down their computers repeatedly or, if the shut downs were automatic, to start up their computers with concomitant loss of time and data;

- (c) they have been and will be unable to run many computer programs that require the processing speed for which the Notebooks were designed and marketed to support;
- (d) they have lost the use of their Notebooks temporarily when forced to bring in their computers for servicing;
- (e) they did not get what they paid for;
- (f) they have suffered loss of time and expenses associated with temporary and/or permanent data loss, and will continue to do so;
- (g) they have suffered loss of time and expenses associated with implementing the BIOS updates, and will continue to do so;
- (h) they have suffered loss of time and expenses associated with troubleshooting and attempting to repair the performance problems, and will continue to do so;
- (i) they have had to purchase other computers to perform the processor-intensive tasks that the Notebooks should have been, but are unable, to perform; and
- (j) they own a computer for which they overpaid.

28. The plaintiffs plead that by virtue of the defendants' knowing disregard for or reckless indifference to the rights of the plaintiffs and others similarly situated, the plaintiffs are entitled to recover aggravated, punitive and exemplary damages.

29. The plaintiffs plead that all of their damage was sustained in Ontario.

THE RELEVANT STATUTES

30. The plaintiffs plead and rely upon the provisions of the *Class Proceedings Act, 1992*, ~~and~~ the *Negligence Act*, R.S.O. 1990, c. N.1 and the *Competition Act*, R.S.C. 1985, c. C-34, all as amended.

PLACE OF TRIAL

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- (b) in respect of damages sustained in Ontario arising from a tort or breach of contract however committed (rule 17.02(h));
- (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)); and

(d) against a person carrying on business in Ontario (rule 17.02(p)).

December 1, 2003

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BONDY et al.

Plaintiffs

vs. TOSHIBA OF CANADA LIMITED et al.

Defendants

Court File No. 03-CV-1679

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT WINDSOR

STATEMENT OF CLAIM

DEC 1 2003

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REF: HTS/sp

JEFFREY CHARLES BONDY and NICOLAS
JOHN MacPHERSON

Plaintiffs

vs. TOSHIBA OF CANADA LIMITED and
TOSHIBA CORPORATION

Defendants

Court File No. 03-CV-1679

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT WINDSOR

AMENDED STATEMENT OF CLAIM

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