

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N^o: 500-06-000488-094

SUPERIOR COURT
(Class Action)

LINDA SANTELLA, [REDACTED]

Petitioner

-vs-

STORK CRAFT MANUFACTURING INC.,
[REDACTED]

Respondent

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND
TO ASCRIBE THE STATUS OF REPRESENTATIVE**
(Art. 1002 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF
QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER
STATES THE FOLLOWING:

GENERAL PRESENTATION

1. Petitioner wishes to institute a class action on behalf of the following group, of which she is member, namely:
 - All persons in Canada who purchased and/or otherwise became the owner of a baby crib manufactured by the Respondent with either (a) manufacturing and distribution dates between January 1993 and October 2009 or (b) the Fisher-Price logo manufactured between October 1997 and December 2004, or any other group to be determined by the Court;

alternately (or as a subclass):

- All persons in Quebec who purchased and/or otherwise became the owner of a baby crib manufactured by the Respondent with either (a)

manufacturing and distribution dates between January 1993 and October 2009 or (b) the Fisher-Price logo manufactured between October 1997 and December 2004, or any other group to be determined by the Court;

(hereinafter, both Quebec resident and non-Quebec resident Class Members are collectively referred to as, "Petitioner(s)", "Class Member(s)", "Group Member(s)", the "Group", the "Class", the "Member(s)", the "Consumer(s)");

2. Respondent designs, manufactures, and distributes baby cribs in Canada, the United-States and elsewhere;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

3. In January 2009, Respondent recalled all of their baby cribs with a manufacturing date between May 2000 and November 2008, the whole as more fully appears from a copy of the Health Canada Recall Notice dated January 2009, filed herewith as those recited at length herein, as **Exhibit R-1**;
4. On November 24, 2009, Respondent once again recalled specific drop-side cribs with plastic hardware:
 - a) with manufacturing and distribution dates between January 1993 and October 2009; and
 - b) with the Fisher-Price logo manufactured between October 1997 and December 2004;

the whole as more fully appears from a copy of the Health Canada Recall Notice dated November 24, 2009, filed herewith as those recited at length herein, as **Exhibit R-2**;
5. Stork Craft sold its cribs to distributors including Fisher-Price, Sears, and Wal-Mart who in turn sold the cribs throughout Canada and the United States;
6. Respondents sold over 1.2 million cribs in the United States and over 1 million cribs in Canada. Respondent typically sold cribs for between \$250-500;
7. As appears from the January 2009 recall, R-1, the metal support brackets used

to support the mattress frame of certain of Respondent's baby cribs could "crack and break after stress is put upon them during incorrect installation". Health Canada further adding that "If one or more support brackets break, the mattress could potentially collapse and create a dangerous gap between the mattress and crib rails in which a child can become entrapped and suffocate";

8. As appears from the November 24, 2009 recall, R-2, Health Canada states the following:

"The cribs' drop-side plastic hardware can break or deform. In addition, the drop-side can be installed upside-down, which can result in broken or disengaged plastic parts. All of these problems can cause the drop-side to detach in one or more corners. When the drop-side detaches, it creates space between the drop-side and the crib mattress. The bodies of infants and toddlers can become entrapped in the space which can lead to suffocation. Complete detachment of drop-sides can lead to falls from the crib. Please note that these products meet current safety standards. However, the reported incidents have demonstrated that the plastic hardware can break.

In Canada, there have been 3 reports of entrapment and 8 reports of falls from these cribs. There have also been 32 other reported incidents related to broken plastic drop-side hardware.

In the United States, there have been 12 reports of entrapments, including 4 incidents of suffocation, and 12 reports of falls from these cribs. There have also been 43 other reported incidents related to broken plastic drop-side hardware."

9. To ordinary and prudent consumers, the above-mentioned defects were latent;
10. Before it sold the cribs, Respondent knew or should have known of the existence of these defects;
11. In Canada and the United States, there were numerous reported and unreported incidents of personal injury and death as a result of the abovementioned defects of Respondent's cribs;
12. As a result of the abovementioned defects and unreasonable risk of personal

- injury and death, the cribs were dangerously and irreparably defective or unsafe;
13. After it recalled the cribs each time (Exhibits R-1 and R-2), Respondent warned consumers not to use them unless they were repaired;
 14. Respondent's warning is an admission that Respondent manufactured, sold or distributed cribs that are not reasonably fit for their intended purpose or unsafe;
 15. Respondent cannot reasonably expect consumers to use the cribs that are defective;
 16. Reasonable parents cannot trust that the cribs will be safe for their infants if they attempt repairs of an admittedly dangerous product;
 17. No repairs can mitigate the unreasonable risk of injury and death from the cribs;
 18. Babies cannot safely sleep in the cribs, whether repairs are attempted or not;
 19. Finally, many Class Members have not actually been made aware of the first and/or the second recalls (R-1 and R-2) and accordingly, their baby were and possible still may be at risk of injury or death;

Petitioner:

20. On December 29, 2008, Petitioner purchased a crib manufactured by Respondent, namely the Christine Stages-OHS-OAK, model 04550-82L;
21. Petitioner's crib was first subject to the January 2009 recall, R-1, and Petitioner was forced to contact Respondent to order and receive the replacement kit;
22. It took over one month for Petitioner to receive said replacement kit and during that time the crib was not safe for use, as per the R-1 recall notice;
23. On or about November 24, 2009, Petitioner was informed of Respondent's second recall on her crib, R-2;
24. Petitioner requires a full refund of the purchase price of her crib, as her crib is no longer fit for the purpose it was purchased;

25. Petitioner reasonably no longer has confidence in Respondent's cribs and she can no longer believe that a second repair (in the same year) would render her crib safe for her baby. Accordingly, she is justified in requesting a full reimbursement of the purchase price of her crib;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

26. The Petitioner and the Class Members are comprised of persons who have purchased or otherwise became the owners of the cribs manufactured by Respondent which are defective or unsafe, as detailed above;
27. Accordingly, the Class Members are entitled to a full reimbursement of the purchase price of their crib and compensation for any other expenses incurred or other damages suffered stemming from the R-1 or R-2 recalls by Respondent;
28. Some Class Members' babies were injured or actually died and the Class Members are entitled to claim damages as a result thereto from Respondent;
29. Some of the expenses related to the medical treatment that the Class Members have undergone or will undergo, will have been borne by the various provincial health insurers including the *Régie de l'assurance maladie du Québec*. As a result of Respondent's conduct, these various provincial health insurers have suffered and will continue to suffer damages for which they are entitled to be compensated by virtue of their right of subrogation in respect to all past and future insured services. These subrogated interests are asserted by Petitioner and the Class Members;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

30. The composition of the group makes the application of article 59 or 67 C.C.P. impractical or impossible for the reasons detailed below;
31. The number of persons included in the Group is estimated at being over 1 million across Canada, as appears from the Exhibit R-1 and R-2 recall notices;
32. The names and addresses of all persons included in the Group are not known to the Petitioner, however, Respondent is likely to possess data regarding sales and distribution figures;

33. In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against Respondent. Even if the Class Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. Furthermore, individual litigation of the factual and legal issues raised by the conduct of Respondent would increase delay and expense to all parties and to the Court system;
34. Moreover, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province) risks having contradictory judgments on questions of fact and law that are similar or related to all Members of the Class;
35. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Member of the Class to obtain mandates and to join them in one action;
36. In these circumstances, a class action is the only appropriate procedure for all of the Members of the Class to effectively pursue their respective rights and have access to justice;
37. The recourses of the Members raise identical, similar or related questions of fact or law, namely:
 - a) Did Respondent's cribs have a latent defect?
 - b) Were Respondent's cribs unsafe?
 - c) Is Respondent responsible to reimburse the purchase price paid by Class Members for the cribs?
 - d) Is Respondent responsible to pay compensatory damages to Class Members stemming from the bodily injuries (including death) of their baby, and if so in what amount?
 - e) Is Respondent responsible to pay any other compensatory, moral, punitive and/or exemplary damages to Class Members, and if so in what amount?
38. The interests of justice favour that this motion be granted in accordance with its conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

39. The action that Petitioner wishes to institute for the benefit of the members of the class is an action in damages for product liability;

40. The conclusions that Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT Plaintiff's action against Defendant;

CONDEMN Defendant to reimburse to the Members of the Group the purchase price paid for the cribs, plus interest as well the additional indemnity since the date of purchase;

CONDEMN Defendant to pay an amount of compensatory damages to Group Members stemming from the bodily injuries (including death) of their baby;

CONDEMN Defendant to pay an amount in compensatory, moral, punitive and/or exemplary damages to every Group Member, plus interest as well the additional indemnity;

CONDEMN Defendant to an amount sufficient to compensate the various provincial health insurers for the medical treatments and expenses that the Class Members' babies have undergone;

GRANT the class action of Petitioner on behalf of all the Members of the Group;

ORDER the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

41. Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:

- a) Respondent's cribs are sold in the District of Montreal;
- b) Class Counsel are domiciled in the District of Montreal;

42. Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Members of the Group, since Petitioner:
- a) purchased a defective or unsafe crib manufactured by Respondent, as detailed above;
 - b) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Group;
 - c) is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class attorneys in this regard;
 - d) is ready and available to manage and direct the present action in the interest of the Class Members that Petitioner wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;
 - e) does not have interests that are antagonistic to those of other members of the Group;
 - f) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intend to keep informed of all developments;
 - g) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Group and to keep them informed;
43. The present motion is well founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioner the status of representative of the persons included in the group herein described as:

- All persons in Canada who purchased and/or otherwise became the owner of a baby crib manufactured by the Respondent with either (a)

manufacturing and distribution dates between January 1993 and October 2009 or (b) the Fisher-Price logo manufactured between October 1997 and December 2004, or any other group to be determined by the Court;

alternately (or as a subclass):

- All persons in Quebec who purchased and/or otherwise became the owner of a baby crib manufactured by the Respondent with either (a) manufacturing and distribution dates between January 1993 and October 2009 or (b) the Fisher-Price logo manufactured between October 1997 and December 2004, or any other group to be determined by the Court;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Did Respondent's cribs have a latent defect?
- b) Were Respondent's cribs unsafe?
- c) Is Respondent responsible to reimburse the purchase price paid by Class Members for the cribs?
- d) Is Respondent responsible to pay compensatory damages to Class Members stemming from the bodily injuries (including death) of their baby, and if so in what amount?
- e) Is Respondent responsible to pay any other compensatory, moral, punitive and/or exemplary damages to Class Members, and if so in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT Plaintiff's action against Defendant;

CONDEMN Defendant to reimburse to the Members of the Group the purchase price paid for the cribs, plus interest as well the additional indemnity since the date of purchase;

CONDEMN Defendant to pay an amount of compensatory damages to Group Members stemming from the bodily injuries (including death) of their baby;

CONDEMN Defendant to pay an amount in compensatory, moral, punitive and/or exemplary damages to every Group Member, plus interest as well the additional indemnity;

CONDEMN Defendant to an amount sufficient to compensate the various provincial health insurers for the medical treatments and expenses that the Class Members' babies have undergone;

GRANT the class action of Petitioner on behalf of all the Members of the Group;

ORDER the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

DECLARE that all Members of the Group that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the Members;

ORDER the publication of a notice to the Members of the Group in accordance with article 1006 C.C.P.;

THE WHOLE with costs to follow.

MONTREAL, November 25, 2009

Merchant Law Group LLP

MERCHANT LAW GROUP LLP
Attorneys for Petitioner and the
Class Members

Copie conforme / True Copy
(s) / (sgd.) Merchant Law Group, LLP
Merchant Law Group, LLP