

Ersler v. Toshiba Am., Inc.
Case No. 07 cv 2304 (SMG) (E.D.N.Y.)

**Owners of 2004 and 2005 Models of Toshiba DLP Televisions
May Claim Settlement Benefits.**

This Class Action Settlement May Affect Your Rights.

A Court authorized this notice. This is not a solicitation from a lawyer.

- The settlement will provide reimbursement of the cost of replacing bulbs used in the lamps on 2004 and 2005 model Toshiba Digital Light Projection (“DLP”) televisions to qualifying owners.
- The settlement resolves a lawsuit over whether Toshiba America Consumer Products, L.L.C. and its parent company, Toshiba America, Inc. (collectively, “Toshiba”) misstated the average useful life of the bulbs contained in the lamps of its DLP televisions.
- The two sides disagree on whether Toshiba did anything wrong.
- If you purchased a 2004 or 2005 Toshiba model DLP television at any time between January 1, 2004, and September 18, 2008, you are a Settlement Class Member and are eligible to make a claim and seek to obtain a refund for past purchases of one or more replacement bulbs for your Toshiba DLP television. Please carefully check the list of eligible models in the Answer to Question 6 below.
- All claims must be made during a 90-day claims submission period which may begin as early as March 23, 2009. If the case is appealed, the claims submission period may be delayed. Because the date by which a claim may be submitted is to be determined based upon the Court's orders, you may visit www.dlplampsettlement.com, to find out when the Claim Submission Period has begun.
- Read this notice carefully because your legal rights will be affected whether you act or don't act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

Request a refund for a purchase of a replacement bulb by submitting the attached claim form (also available on www.dlplampsettlement.com). This is a way to get direct settlement benefits - *i.e.*, cash refunds for certain purchases of replacement bulbs for 2004 and 2005 model Toshiba DLP televisions that you may have purchased.

Object – Write to the Court and to counsel for plaintiffs and Toshiba if you do not like the settlement. As set forth in the answers to questions 17 through 19 below, you may attend a hearing on the fairness of the settlement upon appropriate notice. You have a right to object to the settlement only if you purchased a 2004 or 2005 model Toshiba DLP television on or before September 18, 2008.

Opt Out – Write to counsel for plaintiffs and Toshiba if you do not want to be included in the settlement. You have a right to opt out of the settlement only if you purchased a 2004 or 2005 model Toshiba DLP television on or before September 18, 2008.

Do Nothing – Get no cash refunds. Give up rights. You will still be able to enjoy the benefits of an extension of the warranty on replacement bulbs, as discussed in the Answer to Question 9 below.

These rights and options -- **and the deadlines by which to exercise them** -- are explained in this Notice.

QUESTIONS? CALL TOLL-FREE 1 (800) 894-1766 OR VISIT WWW.DLPLAMPSETTLEMENT.COM

The Court that is supervising this case has granted preliminary approval of the settlement, but still has to decide whether to grant final approval. The final approval hearing will take place on February 18, 2009. Cash refunds for replacement bulbs to qualifying customers will be distributed only if and after the Court grants final approval of the settlement and any appeals are resolved.

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BASIC INFORMATION

1. Why was this Notice issued?

The Court issued this notice because you have a right to know about a proposed settlement of a class action lawsuit that the Court has preliminarily approved. You also are entitled to know how you may make a claim for certain benefits of the settlement and about all of your options. If the Court grants final approval and any appeals are resolved (this date will be referred to as “the Settlement Effective Date”), valuable benefits will be distributed to certain qualifying consumers who made a claim within the Claims Submission Period.

2. What is this lawsuit about?

The people who filed the class action are called the “plaintiffs” and Toshiba is the “defendant.” A lawsuit filed in federal court in New York, captioned *Ersler v. Toshiba Am., Inc.*, Case No. 07 cv 2304 (SMG) (E.D.N.Y.), claims that Toshiba knowingly misrepresented the life span of the bulbs in the lamps contained in the lamp assembly component of its 2004 and 2005 DLP television models. Plaintiffs assert legal claims on behalf of themselves and all members of the “Settlement Class,” defined below. Those claims include breach of express and implied warranties, and alleged violations of the New Jersey Consumer Fraud Act. Plaintiffs seek compensatory damages, treble damages, punitive damages, and attorneys’ fees and costs. Toshiba denies these claims and charges, as well as any wrongdoing in the sale, distribution or marketing of the DLP televisions. In settling this action, Toshiba has agreed to provide cash refunds to certain qualifying owners of these DLP television models for certain of their purchases of replacement bulbs (explained in the Answer to Question 10 below), and to extend the warranty on replacement bulbs for these models from six months to 12 months. More information can be found at www.dlplampsettlement.com, by writing to plaintiffs’ counsel, The Mason Law Firm LLP (“TMLF”), or by calling 1 (800) 894-1766. A copy of the Settlement Agreement will be available at www.dlplampsettlement.com, and is also on file with the Court.

3. Why is this a class action?

In a class action, one or more person(s) called “Class Representatives” sue on behalf of those with similar claims. All of these people together are called a “Class,” and individually, are called “Class Members.” The Court appointed plaintiffs as Class Representatives for purposes of this settlement. One court resolves all of the factual and legal issues for all of the Class Members, except for those who specifically and timely ask to be excluded from the Class. The “Settlement Class Members” are all people who purchased a 2004 or 2005 model Toshiba DLP television between January 1, 2004, and September 18, 2008, and who did not properly or timely exercise their rights to opt out of the settlement.

4. Why is there a settlement?

The Court did not decide in favor of either plaintiffs or Toshiba. Instead, both sides agreed to a settlement. That way, they avoid the uncertainty and cost of a trial, and those included in the Settlement Class and others will get an opportunity to receive cash refunds for replacement bulb purchases and an extended warranty on replacement bulbs for their television models. The Class Representatives and the attorneys appointed by the Court to represent the Class believe that the settlement is in the best interests of all Settlement Class Members.

WHO IS IN THE SETTLEMENT?

5. How do I know if I am part of the settlement?

You are entitled to settlement benefits if you purchased a 2004 or 2005 model Toshiba DLP television between January 1, 2004, and September 18, 2008. All such owners will receive the benefit of an extension of the warranty on replacement bulbs for these television models from six months to 12 months. In addition, certain

owners of those models will also be able to receive cash refunds for purchases of replacement bulbs that they made in the past. Please see the Answer to Question 10 below to determine whether you qualify for such a refund.

Owners of 2006 and 2007 model Toshiba DLP televisions are not included in the settlement and are not entitled to any settlement benefits.

6. What Toshiba model DLP televisions are included?

Any of the following 2004 or 2005 model Toshiba DLP televisions: 44HNHM84, 46HM84, 46HM94, 46HM94P, 52HM84, 52HMX84, 52HM94, 52HMX94, 62HM84, 62HM94, 62HMX84, 62HMX94, 62HM194, 46HM85, 46HM95, 46HMX85, 52HM85, 52HM95, 52HMX85, 52HMX95, 56HM195, 56MX195, 62HM85, 62HM95, 62HMX85, 62HMX95, 62HM195, 62MX195, 62HM15, 62HM15A, 62HM15B, 72HM195, and 72MX195.

7. Are there exceptions to being included in the settlement?

Toshiba and its officers, directors, employees, and attorneys are not included in the Settlement Class. Federal judges and their families are also excluded.

8. What if I am not sure whether I am included in the settlement?

If you are not sure whether you are included in the Settlement Class, you may visit www.dlplampsettlement.com, for more information, or call plaintiffs' counsel, TMLF, at (202) 429-2290, or the Claims Administrator at 1 (800) 894-1766, and ask for assistance.

**THE SETTLEMENT BENEFITS:
WHAT YOU GET AND HOW YOU GET IT**

9. What does the settlement provide?

The settlement provides an extension of the warranty on replacement bulbs purchased for 2004 and 2005 model Toshiba DLP televisions from its present period of six months, for an additional six months, or a total of 12 months from the date of purchase of the replacement bulb. This warranty extension will be implemented by Toshiba if the settlement is finally approved by the Court, and you will not need to do anything to take advantage of the extended warranty. Owners of 2004 and 2005 model Toshiba DLP televisions who make a claim under this extended replacement bulb warranty after the Settlement Effective Date and within that warranty period will receive a free replacement bulb.

In addition, certain qualifying 2004 and 2005 Toshiba DLP television owners will also be able to receive cash refunds for certain purchases of replacement bulbs that they made in the past. Please see the Answer to Question 10 below to determine whether you qualify for such a refund.

10. How can I get a cash refund for a replacement bulb that I purchased in the past?

Not every owner of a 2004 and 2005 model Toshiba DLP television will qualify for a cash refund for past purchases of replacement bulbs. Replacement bulbs purchased within 12 months of the date of purchase of all 2004 and 2005 model Toshiba DLP televisions were already covered by the warranty issued with the television at the time of purchase, and you should not have been charged for purchasing such a bulb. Moreover, replacement bulbs purchased within 24 months of the date of purchase of certain 2005 model Toshiba DLP televisions that fall within a range of serial numbers posted on www.dlplampsettlement.com, were also covered under the warranty, through a warranty extension offered pursuant to Toshiba's Remediation Program in March 2006.

Under the settlement, owners of all 2004 model Toshiba DLP televisions, and owners of those 2005 model Toshiba DLP televisions that do not fall within the range of serial numbers covered by the Remediation Program, who experienced a single bulb failure outside of the 12-month warranty period, but within 18 months from the date of purchase of the television, will be eligible to receive a cash refund for the purchase of the replacement bulb.

Owners of all 2004 and 2005 model Toshiba DLP televisions who experienced two or more bulb failures outside the 12-month warranty period, but within 24 months from the date of purchase of the television, will also be eligible to receive cash refunds for their purchases of replacement bulbs.

Finally, owners of those 2005 model Toshiba DLP televisions that fall within the range of serial numbers covered by the Remediation Program, and who purchased one or more replacement bulbs outside of the 12-month warranty period, but within 24 months from the date of purchase of the television, will also be eligible to receive cash refunds for their purchases of a replacement bulb or bulbs.

If you fall into one of the above categories and wish to seek a refund for one or more replacement bulbs that you purchased, you will need to submit a claim to Toshiba to claim your refund, and to provide proof of purchase of your television and for each replacement bulb for which you seek a refund. A claim form is attached to this notice, and additional claim forms are available at and can be downloaded from www.dlplampsettlement.com. Toshiba, through a Claims Administrator and subject to Court review, will then determine if you are eligible for a refund based on the proof of purchase that you provided and the information contained on your claim form. All claims must be made during the 90-day Claims Submission Period. Because the date by which a claim may be submitted is to be determined based upon the Court's orders, you may visit www.dlplampsettlement.com, to find out when the Claim Submission Period has begun.

11. What claims against Toshiba am I releasing?

If you are a Settlement Class Member when the settlement becomes final -- even if you don't claim a cash refund or purchase another replacement bulb -- you will be releasing Toshiba and its officers, directors, employees, and related corporate entities, from any liability for all claims associated with this case, and you will be bound by the release included in the Settlement Agreement. A copy of the Settlement Agreement containing the release is available at www.dlplampsettlement.com. The release states, in pertinent part:

“Effective as of the Settlement Effective Date, and in consideration of this Agreement and the benefits extended to the Settlement Class, Plaintiffs, on behalf of themselves and the Settlement Class Members, and each Settlement Class Member, on behalf of himself or herself and his or her respective successors, assigns, past, present, and future parents, subsidiaries, joint venturers, partnerships, related companies, affiliates, unincorporated entities, divisions, groups, directors, officers, shareholders, employees, agents, representatives, servants, partners, executors, administrators, assigns, predecessors, successors, descendants, dependents, and heirs, fully release and forever discharge the Released Parties¹ from the Released Claims.²”

¹ The phrase “Released Parties” refers individually and collectively, as appropriate, to Toshiba America, Inc., Toshiba America Consumer Products, L.L.C., and to all of their predecessors and successors-in-interest, including but not limited to, all of their respective past and present parents, subsidiaries, joint ventures, partnerships, related companies, affiliates, controlled entities, assignees, distributors, retailers, consumers (except Settlement Class members), unincorporated entities, divisions, groups, present or former directors, officers, members, agents, employees, representatives, administrators, insurers, indemnitees, and attorneys.

² The phrase “Released Claims” refers to any and all claims, damages, suits, demands, liabilities, judgments, losses, and causes of action relating to the performance or useful life of the lamp assembly component, including its component lamp and bulb, of the 2004 and 2005 model Toshiba DLP televisions from January 1, 2004, through September 18, 2008, of any kind or character, whether known or unknown, matured or unmatured, sounding in law or equity, seeking damages or any other relief (including attorneys' fees), that are now recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, based upon any federal or state statutory or common law, including but not limited to, claims sounding in tort, contract; and the consumer protection laws of the United States or of any state or other jurisdiction within the United States, and all claims, damages, suits, demands, liabilities, judgments, losses, or causes of action which have been, might have been, are now, or could be asserted by any plaintiff in the lawsuit or any Settlement Class Member in an individual or representative capacity (including on

THE LAWYERS REPRESENTING PLAINTIFFS

12. Do I have a lawyer in this case?

Yes. TMLF and other Class Counsel represent you and the other Settlement Class Members. The Court has appointed TMLF as Plaintiffs' Lead Counsel for the lawsuit. If you want to be represented by your own lawyer, you may hire one at your own expense.

13. How will the lawyers be paid?

All of the plaintiffs' counsel will ask the Court for attorneys' fees up to \$215,000 and expenses up to \$2,500. The Court may award less than those amounts. Toshiba has agreed not to oppose plaintiffs' counsel's request for these fees and expenses. Toshiba will separately pay the fees and expenses that the Court awards, as well as the costs to provide notice to the Settlement Class and to administer the settlement. These amounts will not come out of the funds for benefits to Settlement Class Members and others. No Settlement Class Member will pay anything.

TMLF, which acted as Plaintiffs' Lead Counsel, will seek up to \$50,000 in additional attorneys' fees, and up to \$1,000 in additional expenses, for continuing work on the litigation. Toshiba will separately pay these fees and expenses as well, in the amount awarded by the Court. These amounts will not come out of the funds for benefits to Settlement Class Members and others. Again, no Settlement Class Member will pay anything.

EXCLUDING YOURSELF FROM THE SETTLEMENT

14. What do I do if I do not want to be included in the settlement?

You have a right to exclude yourself or "opt out" of the settlement only if you purchased a 2004 or 2005 model Toshiba DLP television before September 18, 2008. To opt out, you must personally sign and mail a request for exclusion to counsel for plaintiffs and Toshiba, at the following addresses:

**LEAD COUNSEL FOR PLAINTIFFS
AND THE SETTLEMENT CLASS:**

Gary E. Mason, Esq.
The Mason Law Firm LLP
1225 19th Street, N.W., Suite 500
Washington, D.C. 20036

COUNSEL FOR TOSHIBA:

Philip R. Sellinger, Esq.
Greenberg Traurig, LLP
200 Park Avenue
Florham Park, New Jersey 07932

You must personally sign the exclusion request, identify the DLP television that you purchased (by both serial number and model number), the date or approximate date that you purchased the DLP television, the State in which the DLP television was purchased, and the approximate total dollar amount of such purchase, and clearly express your desire to be excluded from the Settlement Class. Your request must also include your name and address, and, if you are represented by your own separate counsel, that attorney's name, address and telephone number. **Your exclusion request must be mailed to counsel for plaintiffs and Toshiba and must be postmarked no later than January 28, 2009, or it will not be accepted. If you do not specifically request to be excluded by following these directions, you will automatically be a member of the Settlement Class.** Class members who opt out of the class will not be eligible for a cash refund for purchases of replacement lamps, and will be unable to object to the terms of the settlement, but will be eligible to take advantage of the proposed warranty extension discussed in the Answers to Questions 9 and 15.

behalf of the general public) arising out of, based upon, or related to, in whole or in part, the facts and circumstances underlying the claims and causes of action set forth in the lawsuit. The phrase "Released Claims" does not include any claims for personal injury or for property damage, nor does it include any claims relating to any component part of a Toshiba brand DLP television, other than for property damage to the lamps, bulbs or lamp assemblies themselves, or for property damage to any component thereof.

QUESTIONS? CALL TOLL-FREE 1 (800) 894-1766 OR VISIT WWW.DLPLAMPSETTLEMENT.COM

15. What happens if I don't opt out before January 28, 2009?

If the proposed settlement is approved and you are a Settlement Class Member who does not properly and timely exclude yourself from the class, all bulb-related or lamp-related claims that you may have now or in the future against Toshiba will be **WAIVED AND RELEASED**, and you will be prohibited from bringing any such claims in the future on your own behalf, as provided in the Settlement Agreement. On the other hand, you will receive benefits from the settlement, including an extension of the warranty on replacement bulbs for 2004 and 2005 model DLP televisions from six months to 12 months, and the ability to submit a claim for reimbursement of the costs of purchasing one or more replacement bulbs for 2004 and 2005 model DLP televisions.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I like or don't like the settlement?

If you are a Settlement Class Member, you can express approval of or objection to the settlement. You also can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter to the Court saying that you object to the terms of the settlement in *Ersler v. Toshiba Am., Inc.* You must include your name and address, your signature, the reasons you object to the settlement, and if you are represented by your own separate counsel, you must also provide that attorney's name, address and telephone number. Your objection must also identify the DLP television that you purchased (by both serial number and model number), the date or approximate date that you purchased the DLP television, the State in which the DLP television was purchased, and the approximate total dollar amount of such purchase, and must enclose copies of any materials that you plan to submit to the Court. The objection also must clearly state in detail the legal and factual ground(s) for your objection.

To object, you must file the objection with the Clerk of the Court at CLERK OF THE COURT, United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, no later than January 28, 2009. Please include the phrase "*Ersler v. Toshiba Am., Inc.*, 07 Civ. 2304 (SMG)" below the Court's address on the envelope containing your objection. You must also deliver the objection to plaintiffs' and Toshiba's counsel, whose addresses are listed in the answer to question 14 above, so that it is received by no later than January 28, 2009.

17. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing before the Honorable Steven M. Gold at 10:00 a.m. on February 18, 2009, in Courtroom 13D of the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court also may decide how much to pay plaintiffs' counsel. After the hearing, the Court will decide whether to grant final approval of the settlement. We do not know how long these decisions will take.

18. Do I have to come to the hearing?

No. Plaintiffs' counsel will answer any questions that Magistrate Judge Gold may have. However, you are welcome to come at your own expense. You also may pay your own lawyer to attend the Fairness Hearing on your behalf. If you send an objection, you don't have to come to Court to discuss it. As long as your written objection is received before the deadline, and you have followed the directions contained in the Answer to Question 16 above, the Court will consider everything that you have to say.

19. May I speak at the hearing?

That will be up to Magistrate Judge Gold. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Ersler v. Toshiba*

Am., Inc., 07 Civ. 2304 (SMG)” You must include your name and address, as well as the name, address and telephone number of any attorney who will appear at the Fairness Hearing on your behalf. Your request must also indicate that you previously or contemporaneously objected to the Settlement pursuant to the directions contained in the Answer to Question 16 above, identify the DLP television that you purchased (by both serial number and model number), the date or approximate date that you purchased the DLP television, the State in which the DLP television was purchased, and the approximate total dollar amount of such purchase. You must also include your signature and the specific reasons why you wish to speak at the Fairness Hearing, as well as any ground(s) for your objection. Your Notice of Intention to Appear must be filed with the Clerk of the Court at the address listed in the Answer to Question 16 above no later than January 28, 2009. Please include the phrase “*Ersler v. Toshiba Am., Inc.*, 07 Civ. 2304 (SMG)” below the Court’s address on the envelope containing your notice. Your notice must also be received by plaintiffs’ counsel and Toshiba’s counsel at the addresses listed in the Answer to Question 14 above no later than January 28, 2009.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

If you do nothing, you will be a member of the Settlement Class and after the settlement has been finally approved, will receive a 12-month, rather than a six-month, warranty on any replacement bulbs that you purchase. However, you will not get any cash refunds for purchases of replacement bulbs unless you file a timely claim. Moreover, any and all claims you have will be released.

21. How do I get more information?

If you think you may be a Settlement Class Member or may have purchased an eligible Toshiba DLP television and would like more information about the lawsuit or the terms of the proposed settlement, you may review the pleadings, records and other papers on file in this lawsuit, including the Court’s Order regarding the Preliminary Approval of Class Settlement and the proposed Settlement Agreement, which may be inspected on weekdays, during normal business hours, at the Clerk’s Office, United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York. The Preliminary Approval Order and Settlement Agreement will also be available on www.dlplampsettlement.com. For information on any matters contained in this Notice, you may write to or call plaintiffs’ counsel, TMLF, or call 1 (800) 894-1766.

PLEASE DO NOT CONTACT THE COURT DIRECTLY WITH QUESTIONS ABOUT THE SETTLEMENT.

Dated: September 18, 2008