

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

AZRIEL C. FELLNER, in his capacity as)
the Personal Representative of the Estate)
of Tamar Etana Fellner, Deceased)
Plaintiff)

-vs-

CAUSE NO. 3:05-cv-00218-SEB-WGH

PHILADELPHIA TOBOGGAN)
COASTERS, INC., a Pennsylvania)
Corporation, and)
KOCH DEVELOPMENT)
CORPORATION, an Indiana Corporation)
Defendants)

PLAINTIFF'S FIRST AMENDED COMPLAINT

Comes now the Plaintiff, Azriel C. Fellner, in his capacity as the Personal Representative of the Estate of Tamar Etana Fellner, Deceased, and for his Complaint against the Defendants herein states as follows:

Jurisdiction and Venue

1. The Plaintiff, Azriel C. Fellner, is the duly appointed Personal Representative of the Estate of Tamar Etana Fellner, Deceased.
2. At all times relevant, Mr. Fellner was a citizen of the state of New Jersey.
3. At all times relevant, Tamar Etana Fellner was a citizen of the state of New York.
4. At all times relevant, the Estate of Tamar Etana Fellner, Deceased, was and is proceeding in the state of New York.

5. Defendant, Philadelphia Toboggan Coasters, Inc. (“PTC”), is a corporation duly organized under the laws of the state of Pennsylvania, with its principal place of business located at 3197 Penn Avenue, Hatfield, Pennsylvania.

6. Defendant, Koch Development Corporation (“Koch Development”), is a corporation duly organized under the laws of the state of Indiana with its principal place of business located at 452 East Christmas Boulevard, Santa Claus, Indiana.

7. Koch Development regularly does business under the assumed name of Holiday World.

8. The jurisdiction of this Court is based upon the complete diversity of citizenship (28 U.S.C. §1332) as between the Plaintiff, a citizen of New Jersey, PTC, a citizen of Pennsylvania, and Koch Development, a citizen of Indiana, and the matter in controversy exceeds the sum or value of Seventy Five Thousand Dollars (\$75,000), exclusive of interest and costs.

9. Venue is conferred pursuant to 28 U.S.C. §1391(a)(2) in that a substantial part of the events or omissions giving rise to this claim occurred within this judicial district, and pursuant to the October 18, 2005, Memorandum and Order entered by the United States District Court, Eastern District of Pennsylvania, in the cause of action styled the same as hereinabove and with a cause number of 05-2052.

General Allegations

10. At all times relevant, PTC has been engaged in the design, manufacture and sale of cars and trains for wooden roller coasters.

11. At all times relevant, Koch Development owned and operated an amusement park known as Holiday World.

12. Koch Development operated, among other things, a wooden roller coaster at Holiday World known as “The Raven.”

13. PTC designed, manufactured and put into the stream of commerce the cars and trains for The Raven.

14. On May 31, 2003, Tamar Etana Fellner (“Tamar”), was killed while riding The Raven. She was ejected from the car in which she was riding and fell to her death.

COUNT I

Negligence/Wrongful Death as to Koch Development

15. The Plaintiff incorporates each and every allegation contained in rhetorical paragraphs 1 through 14 as if fully set forth herein.

16. This Count is brought against Koch Development pursuant to Indiana’s Wrongful Death Act, I.C. §34-23-1 *et seq.*

17. At all times relevant, Koch Development owed Tamar, and all riders of The Raven for that matter, a duty to safely maintain, monitor and administer the operation of The Raven.

18. Koch Development breached that duty by *inter alia*:

- A. failing to ensure that Tamar was safely and properly secured by the “restraints” within the car of The Raven in which she was riding;
- B. failing to properly hire, train, monitor and oversee the ride attendants;
- C. failing to properly test, inspect and maintain the safety restraints within the car of The Raven;
- D. failing to provide proper and adequate warnings regarding use of The Raven; and

E. failing to comply with all local, state and/or federal regulations, ordinances, rules and/or statutes applicable to the operation of an amusement park ride such as The Raven.

19. As a direct and proximate result thereof, Tamar was killed.

20. The Plaintiff's damages directly and proximately resulting from Tamar's death include, but are not limited to: (i) medical, hospital, funeral and burial expenses, (ii) loss of love and companionship; (iii) cost and expenses of administering the above-described estate and (iv) the costs and expenses of prosecuting this action, including attorney fees, all of which are in excess of Seventy Five Thousand Dollars (\$75,000).

COUNT II

Products Liability/Wrongful Death as to PTC

21. The Plaintiff incorporates each and every allegation contained in paragraph 1 through 14 as if fully set forth herein.

22. This Count is brought against PTC pursuant to Indiana's Product Liability Act (*see*, I.C. §34-20-2 *et seq.*) and Indiana's Wrongful Death Act (*see*, I.C. §34-23-1 *et seq.*).

23. The Raven, as designed, manufactured and put into the stream of commerce by PTC, was in a defective condition unreasonably dangerous to Tamar specifically and all riders of The Raven generally.

24. Among other things, PTC:

A. failed to safely develop, design, manufacture, test and/or inspect the "restraints" within the cars for The Raven to prevent Tamar's ejection therefrom while riding The Raven;

- B. failed to provide adequate instructions and warnings regarding the proper use, operation and maintenance of the equipment described herein; and
- C. failed to comply with all local, state and/or federal regulations, ordinances, rules and/or statutes applicable to the manufacture and sale of such cars and trains for wooden roller coasters.

25. As a direct and proximate result thereof, Tamar was killed.

26. The Plaintiff's damages directly and proximately resulting from Tamar's death include, but are not limited to: (i) medical, hospital, funeral and burial expenses, (ii) loss of love and companionship; (iii) cost and expenses of administering the above-described estate and (iv) the costs and expenses of prosecuting this action, including attorney fees, all of which are in excess of Seventy Five Thousand Dollars (\$75,000).

27. Additionally, the Plaintiff is entitled to recover punitive damages against PTC as PTC's above-described actions were done so through gross negligence and was not the result of an honest error or judgment, overzealousness, mere negligence or other known failure.

WHEREFORE, the Plaintiff demands judgment in its favor and against the Defendants, jointly and severally, in an amount to be established by the evidence at the trial of this cause and permitted by I.C. §34-23-1 *et seq.*, together with prejudgment interest, punitive damages as to PTC and all other relief just and proper in the premises.

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands trial by jury herein.

Respectfully submitted,

s/Keith W. Vonderahe
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CERTIFICATE OF SERVICE

The undersigned represents that the foregoing document has been served via the Court's electronic case filing system on this 18th day of December, 2006.

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The following individuals have been served the foregoing document this 18th day of December, 2006, via First Class United States Mail.

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/s/ Keith W. Vonderahe
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