

#2007258

FILED

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

06 MAY 18 PM 3:03

SHIRLEY L. MILLER, CLERK  
FOR THE UNITED STATES DISTRICT  
COURT OF INDIANA

ELIZABETH TORRES and )  
ANTONIO TORRES, )

Plaintiffs, )

v. )

CAUSE NO.

INDIANA BEACH, INC., and )  
DESIRAY LYNETTE SIMMONS, )

Defendants. )

2:06CV188RL

COMPLAINT

COUNT I

Come now Plaintiffs Elizabeth Torres and Antonio Torres, by counsel, Richard A. Miller & Associates, and, for Count I of their Complaint, allege and say as follows:

1. This is a tort action against Defendants Indiana Beach, Inc., and Desiray Lynette Simmons . This Court is vested with jurisdiction pursuant to 28 USC Section 1332(a)(1).

2. The Plaintiffs reside in Chicago, Cook County, Illinois, and are citizens of the State of Illinois. Defendant Indiana Beach, Inc., is an amusement park and resort located and doing business in Monticello, White County, Indiana, which is within the Northern District of Indiana, and is a citizen of the State of Indiana. Defendant Desiray Lynette Simmons resides in Bringhurst, Carroll County, Indiana, which is within the Northern District of Indiana, and is a citizen of the State of Indiana. The acts and omissions complained of herein occurred within the Northern District of Indiana.

3. At all times relevant to this Complaint, Defendant Desiray Lynette Simmons was an employee of Defendant Indiana Beach, Inc., in charge of operating the Indiana Beach Sky Ride chair lift located in the south section of the park. At all times mentioned herein, Defendant Simmons had the duty to maintain and operate the Indiana Beach Sky Ride chair lift in a safe manner and condition for persons using the chair lift. All the acts or omissions complained of in this Count of Plaintiffs' Complaint were performed by Defendant Desiray Lynette Simmons while acting within the scope of her employment by Defendant Indiana Beach, Inc., and with the permission and consent of Defendant Indiana Beach, Inc.

4. On and before June 12, 2005, Defendant Desiray Lynette Simmons, as an employee of Defendant Indiana Beach, Inc., was negligent in that she failed to exercise due care in operating the Indiana Beach Sky Ride chair lift, such failure of due care included a failure to stop the ride long enough for Plaintiff Elizabeth Torres safely to enter the chair lift, failure to stop the ride once it was evident Plaintiff Elizabeth Torres was in danger of injury, and failure to react in such a way as to prevent or minimize injury to Plaintiff Elizabeth Torres.

5. On and before this same date, Defendant Indiana Beach, Inc., was negligent in that it failed to exercise due care in training and supervising Defendant Desiray Lynette Simmons in the proper operation and maintenance of the chair lift, and failed to exercise due care in instructing Defendant Desiray Lynette Simmons in how to prevent or react to potential safety-related emergencies such as that which caused injury to Plaintiff Elizabeth Torres. Defendant Indiana Beach, Inc., was further negligent in its failure to adequately staff the Indiana Beach Sky Ride chair lift to provide for the safety of Plaintiff Elizabeth Torres and similarly situated guests, and in its failure to adequately respond to emergencies.

6. On June 12, 2005, Plaintiff Elizabeth Torres lawfully, properly, and with the exercise of due care for her safety attempted to climb into the Indiana Beach Sky Ride, a mechanical chair lift on the grounds of Defendant Indiana Beach, Inc. As a direct and proximate result of the wrongful and negligent conduct of Defendant Indiana Beach, Inc., and its employee, Defendant Desiray Lynette Simmons, the chair lift began moving before Plaintiff Elizabeth Torres had seated herself inside, forcing her to cling to the chair safety bars in an attempt not to fall. While the chair lift was moving, Defendant Desiray Lynette Simmons made no attempt to pull the "stop" cord of the ride, instead panicking, screaming for help and phoning officials in the opposite end of the park. Plaintiff Elizabeth Torres was carried several feet past the edge of the embarkment platform, where she lost hold or was thrown free of the chair lift, and fell fifteen to twenty feet to the ground below.

7. As a direct and proximate result of the wrongful and negligent conduct of Defendant Indiana Beach, Inc., and its employee, Defendant Desiray Lynette Torres, and by reason of her fall from the Indiana Beach Sky Ride chair lift, Plaintiff suffered injuries including: concussion, lung contusion, collapsed lung, multiple spinal fractures with related spinal cord injury, pelvic fracture, closed sacrum/coccyx fracture, closed humerus and radius fractures, multiple rib fractures, hemorrhaging with subsequent anemia, continuing pain and lack of mobility, necessary future surgeries to attempt to repair spinal damage, and permanent chronic pain and mobility damage.

8. As a direct and proximate result of her injuries, Plaintiff Elizabeth Torres has been and will continue to be in great physical, mental and emotional pain and distress and will experience permanent future physical disability. Plaintiff has also incurred, and will incur for an indefinite time in the future, medical expenses and obligations as follows: continuing medical care,

medication, surgery, rehabilitation and physical therapy for ongoing injuries and chronic pain; termination from employment and lost wages due to her injuries, and necessary ongoing medical treatment and rehabilitation.

9. Plaintiff Elizabeth Torres was employed as a nursing home worker at the time of her injuries as alleged above. As a direct and proximate result of the negligence of Defendants and each of them, and of the injuries thereby suffered by Plaintiff Elizabeth Torres, she was terminated from her employment and is still unable to work. Plaintiff Elizabeth Torres is informed, believes, and alleges that these injuries are permanent and will render her partially or wholly incapacitated from continuing her occupation or seeking other forms of employment, and, as a result, Plaintiff Elizabeth Torres will lose future earnings and suffer future damages.

WHEREFORE, Plaintiffs Elizabeth Torres and Antonio Torres demand judgment against the Defendants and each of them in the sum of Seven Million, Five Hundred Thousand Dollars (\$7,500,000.00), together with costs of suit, and such other and further relief as the Court may deem proper.

Respectfully submitted,

RICHARD A. MILLER & ASSOCIATES

Attorneys for Plaintiffs

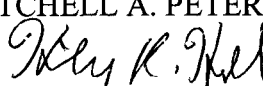
370 West 80<sup>th</sup> Place

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By:   
RICHARD A. MILLER, #9359-45

By:   
MITCHELL A. PETERS, #6560-45

By:   
HILARY R. HALL, #22728-45

**COUNT II**

Come now Plaintiffs Elizabeth Torres and Antonio Torres, by counsel, Richard A. Miller & Associates, and, for Count II of their Complaint, allege and say as follows:

10. Plaintiffs reallege and incorporate Paragraphs 1 through 9, inclusive, of Count I of this Complaint.

11. As a direct and proximate result of Plaintiff Elizabeth Torres's injuries, Plaintiff Antonio Torres has been deprived of the care, companionship, affection and consortium of his spouse, Plaintiff Elizabeth Torres, and has thereby also suffered injury.

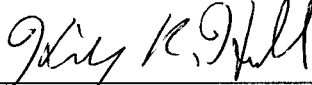
WHEREFORE, Plaintiffs Elizabeth Torres and Antonio Torres demand judgment against the Defendants and each of them in the sum of Seven Million, Five Hundred Thousand Dollars (\$7,500,000.00), together with costs of suit, and such other and further relief as the Court may deem proper.

Respectfully submitted,

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**COUNT III**

Come now Plaintiffs Elizabeth Torres and Antonio Torres, by counsel, Richard A. Miller & Associates, and, for Count III of their Complaint, allege and say as follows:

12. Plaintiffs reallege and incorporate Paragraphs 1 through 11 of Counts I and II, inclusive, of this Complaint.

13. Defendant Indiana Beach, Inc., acted with malice, willfulness, wantonness, and gross neglect toward Plaintiff Elizabeth Torres, with full awareness that its conduct involved a high degree of danger and probable injury to her. Such malice, willfulness, wantonness, and gross neglect included a failure to adequately train and supervise Defendant Desiray Lynette Simmons in the proper operation of the Indiana Beach Sky Ride chair lift, cutting personnel so that Defendant Desiray Lynette Simmons was singlehandedly operating the chair lift when its proper operation required at least two employees, and permitting Defendant Desiray Lynette Simmons to singlehandedly operate the chair lift knowing there would be a substantial distance between where said Defendant assisted patrons disembarking the ride to where said Defendant assisted patrons embarking the ride, thereby increasing the risk of injury to such patrons.

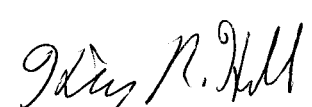
14. As a direct and proximate result of this malice, willfulness, wantonness, and gross neglect on the part of Defendant Indiana Beach, Inc., Plaintiff Elizabeth Torres has been injured as described in Count I of this Complaint and further, is entitled to punitive damages pursuant to Indiana Code §34-51-3-2 in an amount sufficient to punish Defendant Indiana Beach, Inc., and to deter Defendant Indiana Beach, Inc., and others from similar conduct in the future.

WHEREFORE, Plaintiffs Elizabeth and Antonio Torres demand judgment against Defendants and each of them in the sum of Seven Million, Five Hundred Thousand Dollars (\$7,500,000.00), together with punitive damages, costs of suit, and such other and further relief as the Court may deem proper.

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**JURY DEMAND**


Come now Plaintiffs Elizabeth Torres and Antonio Torres, by counsel, Richard A. Miller & Associates, and demand trial by jury.

Respectfully submitted,

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