

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
IN THE 15TH JUDICIAL CIRCUIT
CASE NO. 2018-CP-26-_____

Ally Mulcahy and Jillian McGovern,

Plaintiffs,

v.

BN Performance Rides, Amusements of
Rochester d/b/a Powers Great American
Midways, Burroughs & Chapin Company,
Inc., The Pavilion Nostalgia Park, LLC,
Broadway at the Beach, Inc., and Broadway
Amusement Rides, LLC,

Defendants.

**SUMMONS
(Jury Trial Demanded)**

TO: THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at her Office at 232 King St. Georgetown, SC 29440 (until November 2, 2018) or 137 Professional Ln., Suite B, Pawleys Island, South Carolina, 29585 (after November 2, 2018), within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to Answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

SIGNATURE BLOCK TO FOLLOW

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Pawleys Island, SC

November 15, 2018

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Inc., The Pavilion Nostalgia Park, LLC,
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Defendants.

**COMPLAINT
(Jury Trial Demanded)**

Ally Mulcahy and Jillian McGovern bring this Complaint against the above-captioned Defendants, alleging as follows:

PARTIES

1. The Plaintiff Ally Mulcahy is a citizen and resident of the State of New York and was visiting the City of Myrtle Beach in Horry County, South Carolina, during the events at issue in this litigation.

2. The Plaintiff Jillian McGovern is a citizen and resident of the State of New York and was visiting the City of Myrtle Beach in the Horry County, South Carolina, during the events at issue in this litigation.

3. Defendant BN Performance Rides (BN) is an Italian Company, founded in 2000, with its principal place of business located at Via Como 16, 45037, Melara (RO), Italy.

4. Defendant BN designs, manufactures, sells, and distributes 30 amusement rides, including the “pipeline slide” to park locations worldwide, including but not limited to Myrtle Beach, South Carolina, where the incident occurred.

5. Defendant Amusements of Rochester, Inc. d/b/a Powers Great American Midways (Powers) is a for profit corporation organized under the laws of New York and having its principle place of business in Corfu, New York.

6. Defendant Powers Great American Midway has an office and agents in the State of South Carolina, Horry County, Myrtle Beach, where it (on information and belief) owned and operated the “pipeline slide” at issue herein.

7. Defendant Burroughs & Chapin Company, Inc. (“Burroughs & Chapin”) is a South Carolina company with its principal place of business in Horry County, South Carolina. Defendant Burroughs & Chapin owns and/or operates Broadway at the Beach, a shopping and amusement area where Pavilion Park, Inc. is located.

8. Defendant The Pavilion Nostalgia Park, LLC (“Pavilion Park”) is a South Carolina corporation with its principle place of business in Horry County, South Carolina. Defendant Pavilion Park operates the amusement parks located within Broadway at the Beach, in which the Pipeline Slide at issue in this Complaint is one of the rides.

9. Defendant Broadway at the Beach, Inc. (Broadway) is a South Carolina company with its principle place of business in Horry County, South Carolina. Defendant Broadway owns and operates Broadway at the Beach, which is a tourist attraction in the City of Myrtle Beach that contains restaurants, bars, nightlife, shopping and amusements, including Pavilion Park.

10. Defendant Broadway Amusement Rides, LLC (Broadway Amusement) is a South Carolina Company with its principle offices located at 310 69th Avenue North, Myrtle Beach,

Horry County, South Carolina. Broadway Amusement is involved in the ownership and operation of the “pipeline slide” at issue herein.

JURISDICTION AND VENUE

11. Plaintiffs re-allege the above paragraphs as if fully set forth herein verbatim.
12. The parties are citizens of New York, South Carolina and Italy.
13. The incident giving rise to the present action occurred in Myrtle Beach, South Carolina, located in Horry County. The Plaintiffs reside in New York, and they received much of their medical treatment in New York.
14. This court has subject matter jurisdiction based on the fact that all relevant activities occurred in the State of South Carolina.
15. Defendants are subject to personal jurisdiction in this Court, pursuant to S.C. law, including S.C. Long-Arm Statute, S.C. Code Ann. § 36-2-802, *et seq.* (1976).
16. Defendants, jointly and severally, regularly transact, conduct and solicit business, engage in other persistent conduct, or derive substantial revenue from goods used or consumed or services rendered in Horry County and caused tortuous injury to the Plaintiffs in Horry County.
17. As such and given the foregoing, jurisdiction and venue are appropriate in this Court.

FACTUAL BACKGROUND

18. Plaintiffs re-allege the above paragraphs as if fully set forth herein verbatim.
19. The “Pipeline Slide” at issue in this case was designed and manufactured by BN and is located at Pavilion Park Central in Broadway at the Beach in Myrtle Beach, SC.



Image from: <http://pavilion-park.com/things-to-do/water-pipeline-slide-ride/>

20. It is described as the “largest dryside [sic] on the east coast,” standing at 80 feet tall and providing a journey of 200 feet.

21. Pavilion Park operates several amusement areas at Broadway at the Beach, including Pavilion Park Central. Pavilion Park is a part of the tourist attraction known as Broadway at the Beach, which incorporates amusements, shopping, nightlife, restaurants and bars into one area.

22. Burroughs and Chapin operates and leases the property at Broadway at the Beach. It advertises Broadway as “the most popular tourist destination in the entire Myrtle Beach area,” with a “wide range of activities for visitors of all ages.” Its website includes sections for shopping, eating and drinking, attractions and entertainment.

23. Pavilion Park Central is open during varying hours depending on the season, and it has some nighttime hours of operation.

24. When Pavilion Park is closed, there is no barrier or separation to keep patrons from Broadway at the Beach from entering any of the entrances of Pavilion Park, including the one at Pavilion Park Central.

25. In addition to patrons being able to access the park after hours, Pavilion Park fails to secure its rides and amusements, including Pavilion Slide. After hours, there is only a plastic gate blocking the entrance to the slide, and it is not locked nor otherwise secured to prevent after hours access to the ride.

26. On the weekend of April 29, 2017, the Plaintiffs were in Myrtle Beach, South Carolina for the wedding of a friend. Following the wedding, they went to Broadway at the Beach.

27. The Plaintiffs stayed at the La Quinta Inn, a hotel adjacent to and within walking distance of Broadway at the Beach.

28. In the early morning hours of April 30, 2017, the Plaintiffs walked back to their hotel.

29. They passed by Pavilion Park Central, which was closed. Even though it was closed, the Plaintiffs were easily able to move the unsecured gate at the entrance to the Pipeline Slide and climb the stairs to the top of the slide.

30. Without any employees present to instruct them, the Plaintiffs were not aware that they needed to have the slide sprayed with water, nor did they know that they needed a burlap sack to safely go down the side.

31. Without these safety precautions, the Plaintiffs slid down the slide at a very high velocity, colliding with the metal barrier at the bottom of the slide.

32. As a result of the collision, both Plaintiffs sustained significant injuries. They presented to Grand Strand Regional Medical Center later in the morning on April 30, 2017, where

they received medical attention to stabilize their injuries. They returned home and followed up with providers in New York for full treatment of their injuries.

33. Ally sustained a broken right ankle, broken left ankle and multiple fractures to her left tibia, which has required surgeries and therapy to repair. Jillian sustained a broken tibia, shattered knee plate and two broken ankles.

34. Both have had an extended recovery period due to their significant injuries and surgeries required to repair the injuries. They have also had to take significant time off work.

35. Neither Plaintiff has fully recovered from her injuries. They were both independent, successful young adults, who have had to take extended time off from work for treatment of their injuries.

36. Defendants design, manufacture, own and/or operate amusement rides such as the Pipeline Slide at issue. Each of the Defendants had a duty to keep the patrons and visitors to Broadway at the Beach safe, and/or to design, maintain, inspect and properly operate and secure the amusement rides offered at this location.

37. Pursuant to S.C. Code of Regulations R. 71-4450, all amusement rides should be “guarded against access by non-authorized personnel into the area of operation” and “shall be free from recognized hazards which may cause injury.”

38. The Defendants failed to secure Pipeline Slide, knowing that patrons of Broadway at the Beach would be passing through and have open access to Pavilion Park at all hours of the day.

39. In the manufacture and design of the slide, BN failed to install proper safety equipment to secure the Pipeline Slide when not in use.

40. As a result of the Defendants' negligence, carelessness and recklessness, the Plaintiffs were not prevented from accessing the Pipeline Slide, nor were they provided the proper instruction and materials for safe operation of the slide.

41. As a result of the Defendants' negligence, carelessness and recklessness, the Plaintiffs were severely injured. They have received substantial medical care and incurred damages as a result of the Defendants' inactions.

FOR A FIRST CAUSE OF ACTION
(Negligence)

42. Plaintiffs re-allege the above paragraphs as if fully set forth herein verbatim.

43. Defendants, through their employees, agents and servants, were responsible and had knowledge of the design, construction, management, maintenance, and operation of the Pipeline Slide where Plaintiffs were injured.

44. Defendants had a duty to protect patrons of Broadway at the Beach from latent dangers on the premises.

45. Defendants owed Plaintiffs a duty to exercise reasonable care in providing for Plaintiffs' safety while on Defendant's premises.

46. As a result of the Defendants' negligence, carelessness and recklessness, Plaintiffs were thrown about the slide and injured as a result of their high velocity impact at the bottom of the slide.

47. Defendants did not take any precautions to prevent the Plaintiffs from accessing the Pipeline Slide after hours.

48. Defendants were aware, or should have been aware, that the Pipeline Slide could be accessed by patrons of Broadway at the Beach.

49. Defendants were aware, or should have been aware, that the Pipeline Slide could cause significant injuries if not properly used and supervised.

50. Defendants were negligent, grossly negligent, careless, reckless, willful and wanton in one or more of the following particulars:

- a. In constructing, designing, manufacturing, creating or permitting to be constructed or existing in a hazardous condition;
- b. In failing to adequately secure the Pipeline Slide;
- c. In failing to exercise reasonable care in design, construction, maintenance and operation of the Pipeline Slide so as to safeguard members of the public, and specifically the Plaintiffs;
- d. In acting with reckless and/or wanton disregard for the rights and safety of the Plaintiffs, and all patrons of Broadway at the Beach;
- e. In failing to take precautions or perform repairs, modifications or make changes to the design of the slide in order to adequately secure it when the Pipeline Slide is not in operation;
- f. In failing to properly secure Pavilion Park Central to prevent any unauthorized after-hours access to the park;
- g. In failing to anticipate the possible dangers, hazards, injuries and damages if the Pipeline Slide is accessed without proper supervision;
- h. In failing to take such measures and care as the nature of the situation might require, including those calculated to prevent any access to the Pipeline Slide when the park is not in operation;
- i. In failing to properly secure and monitor the Pipeline Slide; and,

j. In failing to exercise the degree of care and caution which a reasonable and prudent business, manufacturer or person would have made under the same or similar circumstances.

51. As a direct and proximate result of the negligent, grossly negligent, careless, or reckless acts and omissions of Defendants, Plaintiffs sustained serious injuries, which will continue to cause them pain, suffering and discomfort.

52. As a direct and proximate result of the Defendants' negligence, gross negligence, carelessness, willfulness and wantonness, the Plaintiffs suffered, and will continue to suffer, physical harm and injuries as a result of this incident. They have incurred and will continue to suffer physical and mental pain and suffering. They have lost and will continue to lose enjoyment of life, and have incurred, and will continue to incur, medical expenses for treatment of their injuries. Plaintiffs believe they are entitled to recover an amount of actual, consequential, special and punitive damages to be determined by a jury at a trial of this action.

FOR A SECOND CAUSE OF ACTION
(Strict Liability)

53. Plaintiffs re-allege the above paragraphs as if fully set forth herein verbatim.

54. The Defendant BN's slide was designed, manufactured, tested, inspected, produced and marketed by the Defendant in a defective and unreasonably dangerous condition, by way of one or more of the following particulars:

- a. By virtue of its design, manufacture, production, inspection and testing;
- b. By failing to include adequate safeguards to secure the slide when not in use and operation by the company operating the slide;
- c. By the slide's capacity to produce serious harm, when not properly secured and operated.

55. As a direct and proximate result of the unreasonable dangerousness of the Defendant BN's product, Plaintiffs suffered substantial injuries and were forced to seek medical care.

56. Plaintiffs believe they are entitled to recover an amount of actual, consequential, special and punitive damages to be determined by a jury at a trial of this action.

FOR A THIRD CAUSE OF ACTION
(Negligence Per Se)

57. Plaintiffs re-allege the above paragraphs as if fully set forth herein verbatim.

58. Defendants are guilty of negligence per se in failing to comply with the applicable state regulations and statutes governing the manufacture, production, use, maintenance and operation of amusement rides, in a manner causing injury to the Plaintiffs. Specifically, Defendants violated the following statutes and regulations: S.C. Code of Regulations R. 71-4450.

59. As a direct and proximate result of the negligence of Defendants, in one or more of the particulars set forth above, Plaintiffs suffered the injuries and damages alleged above for which they are entitled to actual and punitive damages from Defendants' negligence per se and suffered emotional and mental anguish from their injuries for which they are entitled to actual, consequential, special and punitive damages to be determined by a jury at a trial of this action.

WHEREFORE, Plaintiffs pray for judgment against Defendants for actual, consequential and special damages, for an award of punitive damages, for costs and attorneys' fees and for such other and further relief as this court deems just and proper.

s/ Susan F. Campbell
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