

IN THE COMMON PLEAS COURT OF LUCAS COUNTY, OHIO

CHARLES BOYK, Individually And As
Father and Guardian Of Joshua Boyk, A
Minor Child
19711 Cross Creek Road
Bowling Green, OH 43402

Plaintiffs,

JOANN BOYK, Individually And As Mother
and Guardian Of Joshua Boyk, A Minor Child
19711 Cross Creek Road
Bowling Green, OH 43402

v.

LAUREL HILL SWIM AND TENNIS CLUB,
INC.
C/O Patrick Birney, Agent
2222 Cass Road
Toledo, OH 43614

and

JOHN DOES I, II, III, IV, and V
Names and Address Currently Unknown

Defendants.

) Case No.:

) Judge

) **COMPLAINT WITH JURY DEMAND**
) **AND ATTACHED DISCOVERY**
) **REQUESTS**

) Michael A. Bruno (0033780)

) Nicholas M. Dodosh (0086193)

) Charles E. Boyk Law Offices, LLC

) 405 Madison Ave., Suite 1200

) Toledo, Ohio 43604

) Phone: (419) 241-1395

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) Attorneys for Plaintiffs

Now come Plaintiffs, by and through counsel, and for their Complaint against the above-named Defendants, state as follows:

FIRST CAUSE OF ACTION

1. Joshua Boyk is a minor child of age nine (9) residing at 19711 Cross Creek Road, Bowling Green, OH 43402.
2. Plaintiff Charles Boyk is the father and guardian of minor Joshua Boyk and is bringing this claim on behalf of himself and on behalf of his minor son.
3. Plaintiff Joann Boyk is the mother and guardian of minor Joshua Boyk and is bringing this claim on behalf of herself and on behalf of her minor son.
4. Defendant Laurel Hill Swim and Tennis Club, Inc. is a corporation or other business entity doing business in the State of Ohio, and having a business outlet at 2222 Cass Road, Toledo, Lucas County, OH 43614.
5. Defendants John Doe I, John Doe II, John Doe III, John Doe IV, and John Doe V are individuals, partnerships, corporations, or other business entities whose true names and addresses are currently unknown to Plaintiffs, despite due diligence, but are liable to Plaintiffs with respect to the claims set forth herein.
6. At all times relevant herein, Plaintiffs were members at Defendant Laurel Hill Swim and Tennis Club (hereinafter "Laurel Hill") and Defendant Laurel Hill derived economic benefit from said membership.
7. On or about the early afternoon of August 9, 2010, minor Joshua Boyk was an invitee on the Laurel Hill premises at 2222 Cass Road, Toledo, OH 43614.
8. While in the pool area of the aforementioned Laurel Hill premises, minor Joshua Boyk climbed the ladder of the 3-meter diving board and walked to the end of the board without incident.

9. When minor Joshua Boyk stepped backwards on the diving board to prepare for his forward take-off, he accidentally stepped off the side of the board, fell ten (10) feet, and landed on the concrete deck below.
10. Defendant Laurel Hill owed a duty to Plaintiff's minor child to keep its premises in a safe condition, to conduct the daily operations on the property in such a manner so as to prevent injury to invitees and/or guests, to warn its invitees and/or guests of any unreasonably dangerous conditions of which it either had knowledge or should have had knowledge, to enforce its internal policies and rules, and to comply with all applicable provisions of the Ohio Administrative Code.
11. Defendant Laurel Hill breached its duties owed to Plaintiffs in that it failed to keep its premises in a safe condition, failed to conduct the daily operations on the property in such a manner so as to prevent injury to invitees and/or guests, failed to warn its invitees and/or guests of any unreasonably dangerous conditions of which it either had knowledge or should have had knowledge, failed to enforce its internal policies and rules, and failed to comply with all applicable provisions of the Ohio Administrative Code. As a result of the aforesaid negligent failures, Defendant Laurel Hill has needlessly exposed thousands of children to an inherently dangerous and faulty diving board that had the potential to kill or cause severe personal injuries.
12. As a direct and proximate result of Defendants' negligence, minor Joshua Boyk sustained severe personal injuries.
13. As a direct and proximate result of Defendants' negligence, minor Plaintiff Joshua Boyk sustained injuries to his head, brain, skull, spinal cord, and entire body. Plaintiff Joshua Boyk was required to undergo medical care including two brain

surgeries, treatment for meningitis, and a hospital stay of over three weeks. Plaintiffs incurred medical care costs, and Joshua Boyk incurred great pain, suffering, severe mental anguish, and emotional distress. Plaintiffs believe that these injuries are permanent in nature and will require future medical care, future medical care costs, and minor Plaintiff Joshua Boyk will continue to endure great pain, suffering, mental anguish, emotional distress, and future income loss.

14. As a direct and proximate result of Defendants' negligence, Plaintiffs Charles and Joann Boyk incurred medical care costs, severe mental anguish, emotional distress, and increased health insurance premiums. Plaintiffs believe that these harms are permanent in nature and they will continue to incur medical care costs, severe mental anguish, emotional distress, and increased health insurance premiums.

SECOND CAUSE OF ACTION

15. Plaintiffs incorporate by reference all of the above paragraphs as though fully restated herein.
16. Plaintiff Charles Boyk is the father of minor Plaintiff Joshua Boyk.
17. Plaintiff Charles Boyk states that as a result of the negligence of Defendants, he has been deprived of the love, affection, services, consortium, and society of his son; and that the enjoyment and quality of life and his ability to carry on the normal activities of his daily life with his son have been impaired.

THIRD CAUSE OF ACTION

18. Plaintiffs incorporate by reference all of the above paragraphs as though fully restated herein.
19. Plaintiff Joann Boyk is the mother of minor Plaintiff Joshua Boyk.

20. Plaintiff Joann Boyk states that as a result of the negligence of Defendants, she has been deprived of the love, affection, services, consortium, and society of her son; and that the enjoyment and quality of life and her ability to carry on the normal activities of her daily life with her son have been impaired.

FOURTH CAUSE OF ACTION

21. Plaintiffs incorporate by reference all of the above paragraphs as though fully restated herein.

22. Defendants John Doe I, John Doe II, John Doe III, John Doe IV, and John Doe V are persons, organizations, business entities, or others who, despite the due diligence of Plaintiffs, are unknown and could not be discovered as of the filing of this complaint and who owed Plaintiffs a duty related to the incident described herein.

23. Defendants John Doe I, John Doe II, John Doe III, John Doe IV, and John Doe V breached their respective duties and said breach directly and proximately resulted in injury to Plaintiffs.

WHEREFORE, Plaintiffs pray that judgment be entered against Defendants in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) together with interest, costs, and reasonable attorney fees associated herewith.

Michael A. Bruno, Esq.
Attorney for Plaintiffs

JURY DEMAND

Plaintiffs demand jury trial on all issues triable by right.

Michael A. Bruno, Esq.
Attorney for Plaintiffs

PRAECIPE

TO THE CLERK:

Please serve summons and complaint upon Defendant Laurel Hill Swim and Tennis Club, Inc. by certified mail, return receipt requested, at the address listed on the caption.

Please serve Defendants John Doe I, John Doe II, John Doe III, John Doe IV, and John Doe V personally with summons (indicating “name unknown”) and complaint at the address listed on the caption for Defendant Laurel Hill Swim and Tennis Club, Inc.

Michael A. Bruno, Esq.
Attorney for Plaintiffs

TO DEFENDANT LAUREL HILL SWIM AND TENNIS CLUB, INC.: Plaintiffs hereby request that Defendant Laurel Hill Swim and Tennis Club, Inc., pursuant to Rules 26, 33 and 34 of the Ohio Rules of Civil Procedure, respond to the following Requests for Production of Documents and Interrogatories within twenty-eight (28) days of the date of service hereof.

Said Defendant is required to produce said documents and tangible evidence hereinafter described by mailing same to Plaintiffs' counsel of record: Michael A. Bruno, 405 Madison Avenue, Suite 1200, Toledo, Ohio 43604 within twenty-eight (28) days of the date of service. Pursuant to Rule 26(e) of the Ohio Rules of Civil Procedure, Plaintiffs request that the Defendant reasonably supplement its responses after date of return or before the time of trial.

INSTRUCTIONS FOR RESPONDING

A. In answering the Request for Production, you are required not only to furnish such documents and tangible evidence as you possess personally, but also documents and tangible evidence which are in the possession of your relative or other who are holding those documents or that tangible evidence on your behalf, your attorneys, your agents, or your employees.

B. When after a reasonable and thorough investigation using due diligence, you are unable to provide a document because of lack of availability, identify said document and specify in full and complete detail the reason the document is not available to you and what has been done to locate and obtain such document.

C. Where the Request for Production calls for the production of a document as to which you claim a privilege as a ground for non-production, please set forth with respect to the document, in addition to any other information requested, its date, author, addressee if any, title, type of tangible thing (letter, memorandum, telegram, chart, report, tape recording), subject matter (without revealing the information as to which privilege is claimed), and with sufficient

specificity to permit the Court to make a full determination whether the claim of privilege is valid, each and every fact or basis on which you claim such privilege.

D. If any document called for by this discovery is not available or accessible, or does not provide information in the full detail requested, this discovery shall be deemed to call for the best documents available on the subject matter.

E. This Request for Production and answers to interrogatories is deemed to be continuing and to require the furnishing of additional documents and reasonable supplementation of responses whenever additional, updated or revised documents or information become available to you.

DEFINITION OF TERMS USED IN THESE INTERROGATORIES

A. As used herein, the term "document" means any writing or any other tangible thing of any kind and description, however produced or reproduced, whether draft or final, original or reproduction, in your actual or constructive possession, including, but not limited: letters, correspondence, resumes, memoranda, notes, films, transcripts, contracts, agreements, licenses, memoranda of telephone or personal conversations, microfilm, microfiche, telegrams, books, magazines, newspapers, brochures, press releases, advertisements, periodicals, bulletins, circulars, pamphlets, statements, notices, reports, rules, regulations, directives, teletype, or telefax messages, communications, minutes of records of meeting, expression of or statements of policy, lists of persons attending meetings or conferences, reports and/or summaries of investigations, opinions or reports of consultations, appraisals, reports or summaries of negotiations, interoffice communications, financial statements, ledgers, books of account, proposals, prospectuses, offers, orders, receipts, working papers, desk calendars, appointment books, diaries, time sheets, logs, movies, tapes for visual or audio reproduction,

recordings, or materials similar to any of the foregoing, however, denominated, and including drawings, graphs, charts, photographs, phone-records, data-processing paper results, data print-outs, data computations (both in existence and in memory components), and other data compilations from which information can be obtained and translated, if necessary, by you through devices into reasonably usual form. The term "document" also includes any copies of each document if the copies are in any way whatsoever not identical copies of the original, by reason of additional writing or notations or otherwise.

B. Person includes natural persons, corporations, trusts, partnerships, joint venture, associations and any other business or legal entity.

C. Identify means the following:

1. If referring to a person it means a statement as to:

- a. The full name, business affiliation, and business title of such person;
- b. The last known business and home address of such persons;
- c. The last known business and home telephone number of such person; and
- d. If such person is not a natural person, state:
 - i. Its name;
 - ii. Its last known business address;
 - iii. Its character, e.g.: corporation, partnership;
 - iv. The name(s) and last known residence address(es) of its officers, directors, partners, and/or principals.

2. If referring to a writing, it means a statement as to:

- a. The nature of such writing and the date it bears;
- b. The title or designation of such writing;
- c. The date or dates of preparation of such writing;
- d. The name of the person or persons who prepared such writing;
- e. The name of the person or person who executed such writing;
- f. The name of the person or persons to whom such writing is

addressed;

- g. Any file number used in connection with such writing;
- h. The portion of such writing, described by page and line number, which bears upon the subject inquired of this

interrogatory;

- i. The present location of such writing and each copy thereof;
- j. The name and address of the person(s) presently possessing or having

custody or control of such writing;

- k. A description of the means and circumstances by which you came into possession of such writing;

- l. The date upon which you came into possession of such writing;

m. A description of the means and circumstances by which you first became aware of such writing;

- n. The date upon which you first became aware of such writing;

and

- o. A brief summary of the contents of such writing; in lieu

thereof, a true and complete copy of the writing may be appended to your answers to these interrogatories.

3. If referring to an oral communication, it means a statement as to:

a. The nature of such oral communication and the date it occurred;

b. Whether such oral communication was made by person or telephone;

c. The name of the person(s) who participated in or had knowledge of such oral communication;

d. The geographical location of each such person at the time of such communication;

e. The precise words used in the communication by each person present when such communication took place, or if the precise words cannot be stated, what was said by each person in words of substance or effect, or if this cannot be stated, a general description of the subject matter of the communication;

f. The number of minutes or hours during which such communication occurred;

g. A description of the means and circumstances by which you became aware of such oral communication; and

h. The date upon which you first became aware of such oral communication.

REQUEST FOR PRODUCTION NO:

1. A copy of any and all applicable insurance policies of any kind including the face sheet that lists specific policy limits that were in effect on August 9, 2010.

REQUEST FOR PRODUCTION NO:

2. A copy of any and all documents and/or witness statements prepared by the defendant or any of its agents concerning the subject matter of plaintiffs' complaint.

REQUEST FOR PRODUCTION NO:

3. A copy of any and all documentation indicating the names, addresses, and/or phone numbers of any witnesses that may have seen the incident that is the subject matter of plaintiffs' complaint.

REQUEST FOR PRODUCTION NO:

4. A copy of the incident report(s) pertaining the injury to the subject matter of plaintiffs' complaint.

REQUEST FOR PRODUCTION NO:

5. A copy of any digital or video recordings that might have captured the incident that is the subject matter of plaintiffs' complaint.

REQUEST FOR PRODUCTION NO:

6. A copy of any digital or video recordings that might have captured plaintiffs' expert's inspection of the diving board in question.

REQUEST FOR PRODUCTION NO:

7. A copy of any and all documentation, in whatever form it may exist, pertaining in any way to the membership of Charles Boyk, Joann Boyk, and/or Joshua Boyk at the Laurel Hill Swim and Tennis Club, including but in no way limited to the complete membership file for each of the aforementioned individuals.

REQUEST FOR PRODUCTION NO:

8. A copy of any and all yearly safety reviews, inspections, audits, or similar documentation pertaining to the pool at Laurel Hill Swim and Tennis Club spanning from the date that the diving board in question was installed at the Laurel Hill Swim and Tennis Club premises and up through August 9, 2010.

REQUEST FOR PRODUCTION NO:

9. A copy of any and all meeting minutes prepared by defendant or defendant's agents prior to August 9, 2010 where the diving board, platform, and/or the diving apparatus and/or surrounding area was discussed, actions to be taken concerning the diving board, platform, and/or the entire diving apparatus and/or surrounding area was discussed, or where any discussions pertaining or related in any way the diving board, platform, and/or the entire diving apparatus and/or surrounding area in question occurred.

REQUEST FOR PRODUCTION NO:

10. A copy of any and all meeting minutes prepared by defendant or defendant's agents where the incident described in the plaintiffs' complaint was discussed, actions to be taken as a result of the incident described in plaintiffs' complaint were discussed, or where any discussions pertaining or related in any way to the incident described in plaintiffs' complaint occurred.

REQUEST FOR PRODUCTION NO:

11. A copy of any and all newsletters, advertisements, or brochures that mentioned or otherwise made reference to the pool at Laurel Hill Swim and Tennis Club and that were sent out or offered to the public or to Laurel Hill Swim and Tennis Club members during the time period of August 9, 2005 through August 9, 2010.

REQUEST FOR PRODUCTION NO:

12. A copy of any and all safety regulations pertaining in any way to the pool at Laurel Hill Swim and Tennis Club either in writing or which were posted in or around the pool area on or before August 9, 2010.

INTERROGATORY NO:

1. State your full name, birth date, home address, Social Security number, business address, and occupation or title; and if the defendant is a corporation state the office you hold with the defendant as well as the name and address of the statutory agent.

Answer:

INTERROGATORY NO:

2. If it is the defendant's contention that the plaintiffs' injuries were caused by some person, firm, or corporation other than the defendant or any agent or employee of the defendant, please identify each such person, firm, or corporation fully, giving name, occupation, address, and a complete description of the way in which each such person, firm, or corporation caused or contributed to the plaintiffs' injuries.

Answer:

INTERROGATORY NO:

3. Please state the identity and location of each person other than your attorney who has knowledge of discoverable matters relating in any way to the claims asserted by the plaintiffs' complaint.

Answer:

INTERROGATORY NO:

4. Please completely identify each person the defendant expects to call as a witness or expert witness at trial, and state for each such person: the name, address and occupation, the subject matter the person is expected to testify about, the substance of all facts and opinions to which the person is expected to testify, a summary of the grounds for each such opinion, experiences in the area of similar or comparable products, and a list of books, treatises, articles and other works which the person regards as authoritative on the subject on which he/she is expected to testify.

Answer:

INTERROGATORY NO:

5. State the name and address of each person who witnessed or claims to have witnessed the incident described in plaintiffs' complaint.

Answer:

INTERROGATORY NO:

6. State whether you have any statements from any witnesses or parties other than yourself concerning the incident described in plaintiffs' complaint.

Answer:

INTERROGATORY NO:

7. If the answer to interrogatory number 6 is affirmative, state the name and address of each such party or witness and the date of such statement.

Answer:

INTERROGATORY NO:

8. List the names, addresses, phone numbers, and job title of all Laurel Hill Swim and Tennis Club employees that were working in or around the area where minor plaintiff Joshua Boyk was injured on August 9, 2010.

Answer:

INTERROGATORY NO:

9. State the date that the diving board in question was installed at the Laurel Hill Swim and Tennis Club premises.

Answer:

INTERROGATORY NO:

10. Since the date that the diving board in question was installed at the Laurel Hill Swim and Tennis Club premises, list each and every date that maintenance work was performed on said diving board, platform, and/or the entire diving apparatus and surrounding area. For each date listed, provide a brief statement of the nature of the maintenance work performed.

Answer:

REQUEST FOR PRODUCTION NO:

13. For each maintenance date listed in the preceding interrogatory, provide any and all documentation relating thereto in whatever form it may exist.

INTERROGATORY NO:

11. State the name, job title, and dates of employment for each Laurel Hill Swim and Tennis Club employee for the time period of August 9, 2005 through August 9, 2010.

Answer:

INTERROGATORY NO:

12. State the name(s) of the pool supervisor(s) who was/were responsible for the day to day operations of the Laurel Hill Swim and Tennis Club on August 9, 2010.

Answer:

INTERROGATORY NO:

13. State the name, address, and telephone number of any and all experts or potential experts that the defendant or the defendant's agents have retained or contacted pertaining in any way to the claims set forth in the plaintiffs' complaint, whether or not such individual has reviewed any documentation.

Answer:

INTERROGATORY NO:

14. State whether the pool rules and/or safety regulations pertaining in any way to the pool at Laurel Hill Swim and Tennis Club have been changed subsequent to August 9, 2010, and if so, state the regulation(s) that changed and the nature of the change(s).

Answer:

INTERROGATORY NO:

15. List each and every accident or safety related incident that has occurred at the Laurel Hill Swim and Tennis Club related in any way to the diving board, platform, and/or the entire diving apparatus and surrounding area since the date that the structure was installed at the Laurel Hill Swim and Tennis Club premises. For each incident listed, provide the date and a brief statement of the nature of the incident.

Answer:

REQUEST FOR PRODUCTION NO:

14. For each accident or safety related incident listed in the preceding interrogatory, provide any and all documentation relating thereto in whatever form it may exist.

INTERROGATORY NO:

16. On August 9, 2010, was the Laurel Hill Swim and Tennis Club premises and/or pool covered under a liability insurance policy? If so, please state the following :

- a. name of insurance company;
- b. named insured;
- c. dates of coverage;
- d. policy number;
- e. limits of liability coverage;

Answer:

REQUEST FOR ADMISSION NO:

1. Admit that the hand guard rails atop the 3-meter diving board that is the subject of plaintiffs' complaint did not extend to the edge of the water of the Laurel Hill Swim and Tennis Club pool on August 9, 2010.

Answer:

Respectfully submitted,

Michael A. Bruno, Esq.
Attorney for Plaintiffs