

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

MELISSA JENKS, INDIVIDUALLY)
AND AS G/N/F OF RODERICK)
JENKS,)

Plaintiffs)

Civil Action No. 1:09 CV 205-JD

vs.)

NEW HAMPSHIRE MOTOR)
SPEEDWAY, INC., F/K/A NEW)
HAMPSHIRE SPEEDWAY; BREANN)
M. THOMPSON; TEXTRON, INC.,)

Defendants)

SECOND AMENDED COMPLAINT FOR DAMAGES

NOW COMES Melissa Jenks, Guardian and next friend of Roderick Jenks and Melissa Jenks, Individually, the Plaintiffs in the above-matter, both of Wilder, County of Windsor, State of Vermont, and complain against New Hampshire Motor Speedway, Inc., formerly known as New Hampshire Speedway of Loudon, Merrimack County, State of New Hampshire; Breann M. Thompson, of 163 Shaw Hill Road, Sanbornton, County of Belknap, State of New Hampshire; and Textron, Inc., a Delaware Corporation. In making this Complaint, the Plaintiffs state the following:

STATEMENT OF JURISDICTION

The Plaintiffs are citizens of the State of Vermont and reside at 50 Fern Street, Wilder, Windsor County, Vermont.

The Defendant, New Hampshire Motor Speedway, Inc., f/k/a New Hampshire Speedway is a corporation incorporated in the State of New Hampshire with its principal place of business at 1122 US route 106N, Loudon, Merrimack County, New Hampshire 03307 and a mailing

address of P.O. Box 7888, Loudon, New Hampshire 03307. The registered agent is CT Corporation System, 9 Capitol Street, Concord, NH 03301.

Defendant Breann M. Thompson, is a citizen of the State of New Hampshire and whose last known address is 163 Shaw Hill Road, Sanbornton, New Hampshire 03269.

Textron, Inc., is a Delaware Corporation, with a principal place of business at 40 Westminster Street, Providence, Rhode Island 02903. The registered agent is CT Corporation System, 9 Capitol Street, Concord, NH 03301.

The amount in controversy, without interest and costs, exceeds the sum or value specified by 28 U.S.C. § 1332.

This Court has the authority to consider any remaining causes of action under its supplemental jurisdiction to determine issues of state law which arise out of the same occurrence. See 28 U.S.C. Section 1367.

There exists between the parties an actual controversy justiciable in nature.

The Court has subject matter jurisdiction over this matter based on diversity of citizenship between the parties pursuant to 28 U.S.C. § 1332.

REQUEST FOR JURY TRIAL

The Plaintiffs request a jury trial on all issues to which they are entitled.

FACTUAL BACKGROUND

1. Melissa Jenks and Roderick Jenks are married. Melissa Jenks is the Guardian of Roderick Jenks and has acted in that capacity since the 12th day of October 2006, pursuant to an order of the Windsor County Probate Court, Woodstock, Vermont.

2. Melissa and Roderick live at 50 Fern Street, Wilder, Vermont and are residents of the State of Vermont. Their mailing address is P.O. Box 167, Wilder, Vermont 05088.

3. The Defendant, New Hampshire Motor Speedway, Inc., (hereinafter “The Speedway”) was formerly known as New Hampshire Speedway, Inc. The Speedway is a New Hampshire corporation in good standing. It has a principal place of business at 1122 US Route 106N, Loudon, Merrimack County, New Hampshire 03307. The registered agent is CT Corporation System, 9 Capitol Street, Concord, NH 03301.

4. The Defendant, Breann M. Thompson, is a New Hampshire citizen with a last known address of 163 Shaw Hill Road, Sanbornton, County of Belknap, New Hampshire 03269. Ms. Thompson, at all times pertinent, was employed by The Speedway, located at the New Hampshire Motor Speedway in Loudon, New Hampshire.

5. The Defendant, Textron, Inc., is a Delaware corporation with a principal place of business at 40 Westminster Street, Providence, Rhode Island 02903. It is registered to do business in New Hampshire and is in good standing. The registered agent is CT Corporation System, 9 Capitol Street, Concord, NH 03301.

6. The Plaintiffs allege that each of the Defendants are responsible in some manner for the actions and damages alleged in this complaint, and that the damages suffered by the Plaintiffs were proximately caused by the acts and/or omissions of the Defendants.

7. The Plaintiffs further allege that The Speedway is responsible for the actions of Breann M. Thompson, for the reasons described in this Complaint.

STATEMENT OF FACTS

8. Plaintiffs repeat and restate the allegations set forth in paragraphs 1 – 7 of the Complaint as if fully set forth herein.

9. On July 16, 2006 at approximately 6:00 a.m., Roderick Jenks, whose date of birth is June 9, 1959, suffered a traumatic brain injury when he was thrown from the back of the golf

cart, which was used to transport workers and guests at The Speedway. Upon information and belief the golf cart was an E-Z-Go golf cart manufactured and distributed by Defendant Textron, Inc.

10. The Speedway is/was operated at the time by the Defendant, New Hampshire Motor Speedway, Inc., formerly known as New Hampshire Speedway.

11. At the time and place described above, Roderick, his wife Melissa and other workers agreed to perform work for The Speedway to raise money for their favorite charity. In Roderick's case, that was "Fishin For Kids, Inc." (FFK), a New Hampshire charity.

12. Roderick, Melissa and other workers agreed to have The Speedway donate \$7.00 per hour, for each hour they worked, directly to FFK, or whatever other charity they selected.

13. The work of Roderick and other workers was closely supervised by The Speedway. He was required to dress in accordance with the standards of The Speedway, act in a manner prescribed by The Speedway and utilize a time clock to track his work hours.

14. Roderick had previously worked for The Speedway in 2005, under similar terms and conditions.

15. Upon information and belief, on each race weekend, there are approximately 1,500 workers donating the money they would otherwise have been paid, to various charities.

16. On July 16, 2006, at approximately 6:00 a.m., Roderick and his friend, Marc MacAlpine, caught a ride on a golf cart, believed to be a model E-Z-GO, manufactured and/or distributed by Textron, Inc., with the cart being owned or under the control of The Speedway.

17. The golf cart was being driven by the Defendant, Breann M. Thompson (date of birth 9/24/1985), then an employee of The Speedway.

18. Breann M. Thompson and Marc MacAlpine rode in the front passenger seats and Roderick was crouched on the back, where golf clubs are normally carried.

19. Ms. Thompson drove the cart at an inappropriately high speed and as the cart neared some friends, Ms. Thompson suddenly swerved the cart to the right, causing Roderick to be thrown from the back of the cart.

20. There were no warning stickers at the track or on the carts, about the speed carts should operate.

21. There were not warnings prohibiting passengers from riding in the back of the cart, either posted at the track or placed on the cart.

22. The Speedway had a legal duty to train Ms. Thompson regarding the safe operation of golf carts, to warn her about their hazards and to supervise her in the safe operation of same. The Speedway had a legal duty as well to provide training and warnings to Mr. Jenks and to other co-workers.

23. Upon information and belief, Ms. Thompson had not been trained how to operate the cart in a safe and reasonable manner and The Speedway did not know whether she was qualified, or able to operate the cart safely.

24. Ms. Thompson operated the cart in such a manner as to cause it to swerve, which caused Roderick to be thrown from the cart and hit his head to violently strike the pavement.

25. As a direct and proximate result of Ms. Thompson's negligent operation of the cart, Roderick suffered traumatic brain injury (T.B.I.).

26. Following his injury, Roderick Jenks was transported by ambulance to Concord Hospital, a distance of approximately twenty to twenty-five miles. While there, he underwent emergency brain surgery.

27. After surgery and a recovery period, Roderick was taken to Northeast Rehabilitation, where he stayed from August 2006 until November 2006. Thereafter, he was transferred to Crotched Mountain Rehabilitation Center, Greenfield, New Hampshire, where he attempted to recover from his injuries. Roderick was released from Crotched Mountain in August 2007 and returned to his home in Wilder, Vermont. Roderick's medical expenses are in excess of \$500,000.00.

28. Upon his return to his home, Roderick has required the care and assistance of multiple care providers who assist persons with T.B.I.

29. Roderick has lasting and permanent injuries as a result of T.B.I.

30. Roderick has lost wages, income and is unable to earn a living.

COUNT I
Negligence of Breann M. Thompson

31. Plaintiffs repeat and restate the allegations set forth in paragraphs 1 – 30 of the Complaint as if fully set forth herein.

32. In his first cause of action, Roderick complains against Breann M. Thompson individually.

33. Roderick complains that Breann M. Thompson drove the golf cart in question in a negligent manner, in that she drove the golf cart at a high rate of speed and was unable to maintain control over it.

34. In addition, Ms. Thompson failed to maintain a proper lookout and keep the golf cart under control.

35. As a direct and proximate result of Ms. Thompson's conduct, Roderick suffered severe and lasting injuries for which Breann M. Thompson should be held responsible.

WHEREFORE, Roderick Jenks prays for judgment against Breann M. Thompson in an amount within the minimum and maximum jurisdictional limits of the court, plus statutory interest, attorney's fees and costs.

COUNT II
Negligence of New Hampshire Motor Speedway, Inc.

36. Plaintiffs repeat and restate the allegations set forth in paragraphs 1 – 35 of the Complaint as if fully set forth herein.

37. Defendant New Hampshire Motor Speedway, Inc. had a legal duty to properly train and supervise the conduct of Breann M. Thompson with respect to the proper and safe operation of golf carts utilized by The Speedway to transport individuals throughout the property.

38. In his second cause of action, Roderick complains against New Hampshire Motor Speedway, Inc., formerly known as New Hampshire Speedway.

39. Roderick Jenks believes and therefore avers that The Speedway, should be held responsible for his injuries, because it failed to properly warn and supervise Breann M. Thompson, Roderick Jenks and other co-workers regarding golf cart use and the operation of the golf cart.

40. Roderick Jenks believes and therefore avers that The Speedway, failed to properly train Ms. Thompson, Mr. Jenks and other co-workers regarding golf cart hazards, use and operation and to provide them with a safe place of work.

41. In addition, Roderick complains that The Speedway, was negligent in not establishing a maximum speed for the golf cart, and for not governing the speed mechanically.

42. In addition, The Speedway failed to post warnings at the track, or on the cart, about proper speed and operation of the cart, to include not riding on the back of the cart.

43. Any one or more of the actions described above are the proximate cause of Roderick's injuries and for his medical and remedial care and loss of income.

WHEREFORE Roderick Jenks prays for judgment against New Hampshire Motor Speedway, Inc. in an amount within the minimum and maximum jurisdictional limits of the court, plus statutory interest, attorney's fees and costs.

COUNT III
Vicarious Liability of New Hampshire Motor Speedway, Inc.
for the Conduct of Breann M. Thompson

44. Plaintiffs repeat and restate the allegations set forth in paragraphs 1 – 43 of the Complaint as if fully set forth herein.

45. Roderick states that Breann M. Thompson was employed by New Hampshire Motor Speedway, Inc. On the date in question, the Defendant, Breann M. Thompson was operating the subject golf cart in the course and scope of her employment with The Speedway.

46. New Hampshire Motor Speedway, Inc. should be held vicariously liable under the doctrine of Respondent Superior, for the negligent conduct of its employee, Breann M. Thompson.

WHEREFORE Roderick Jenks prays for judgment against New Hampshire Motor Speedway, Inc. in an amount within the minimum and maximum jurisdictional limits of the court, plus statutory interest, attorney's fees and costs.

COUNT IV
Vicarious Liability of New Hampshire Motor Speedway, Inc.
for the Conduct of Other Employees

47. Plaintiffs repeat and restate the allegations set forth in paragraphs 1 – 46 of the Complaint as if fully set forth herein.

48. New Hampshire Motor Speedway, Inc. contends that the negligence of others including Marc MacAlpine and John Horgan, were the proximate cause of the injuries to Roderick Jenks.

49. To the extent that these “others” were employees of The Speedway, or were unpaid employees volunteering their services to The Speedway, the Plaintiff’s contend that these others were in a master servant relationship with The Speedway.

50. These other employees or unpaid employees, including Marc MacAlpine and John Horgan, were at all times relevant to the Complaint operating within the course and scope of their duties with The Speedway.

51. To the extent that The Speedway proves that the conduct of other employees and unpaid employees was a proximate cause of the injuries to Roderick Jenks The Speedway is vicariously liable for the actions of these employees or unpaid employees under the doctrine of Respondent Superior.

WHEREFORE Roderick Jenks prays for judgment against New Hampshire Motor Speedway, Inc. in an amount within the minimum and maximum jurisdictional limits of the court, plus statutory interest, attorney’s fees and costs.

COUNT IV
Textron, Inc.

52. Plaintiffs repeat and restate the allegations set forth in paragraphs 1 – 51 of the Complaint as if fully set forth herein.

53. As of the date of Roderick’s injuries, Textron, Inc. was in the business of manufacturing, designing, selling and/or leasing E-Z-GO golf carts.

54. The above activity was done for the purpose of sale, leasing, or renting of the E-Z-GO golf carts and use by members of the general public and workers at The Speedway for the

purpose of transportation. Upon information and belief on July 16, 2006, there were hundreds of E-Z-GO golf carts in use at The Speedway.

55. Textron, Inc. knew, or should have known, that their golf carts would be sold, leased and used by the members of the general public and workers at The Speedway, including people similar to Roderick, without inspections for defects in design and manufacturer.

56. Prior to July 16, 2006, Textron, Inc. put into the stream of commerce the E-Z-GO cart in question. This golf cart had been designed and manufactured by Textron, Inc.

57. On the date in question, the Defendant, Breann M. Thompson was given, or had access to the subject golf cart to use during the course and scope of her employment with The Speedway.

58. Ms. Thompson in turn used the golf cart to transport individuals, to include the Plaintiff, Roderick Jenks, from one part of The Speedway to another part of The Speedway.

59. On the date in question, the subject golf cart was defective in its design and manufacture, which rendered it unreasonably dangerous, and amongst other things, the subject cart was unstable and unwieldy and had a propensity to cause disruption to its passengers due to a high center of gravity and unsafe design when operated by a user such as Breann M. Thompson in the manner which was foreseeable by the Defendants.

60. As a result of the defects in the design and manufacture of the subject golf cart, the golf cart went out of control, throwing Roderick to the pavement, causing him serious and permanent injuries to his head and other parts of his body.

61. Furthermore, there were no warnings posted on the golf cart stating that it was dangerous and unsafe to operate the cart, with a passenger on the back of the cart.

62. At all times prior to the sale of the subject golf car in 1997, it was foreseeable to Textron that individuals could ride on the rear platform of the golf car.

63. The National Electronic Injury Surveillance System (NEISS) is a database that is compiled and maintained by the United States Consumer Product Safety Commission (CPSC).

64. The NEISS data system is used by government agencies, manufacturers, researchers and public health officials to look at injuries from consumer products as well as injuries related to sports.

65. Golf cars and/or Golf carts are considered consumer products according to the Consumer Product Safety Commission.

66. At all times relevant to the matters set forth in this complaint, Textron has employed a reliability engineer whose focus is geared primarily toward product safety issues.

67. As part of his duties, Textron's reliability engineer considered warnings to be placed on the subject golf car.

68. As part of its design protocol, Textron understands that warnings on the subject car may be developed, modified or enhanced depending on information that becomes available to it regarding uses of its golf cars and hazards and risks associated with the use of golf cars.

69. At all times relevant to the matters set forth in this complaint, Textron was aware that being ejected from a moving golf car presented a danger and could be an extreme danger to an occupant.

70. Beginning in the mid-1980s, Textron's reliability engineer (A/K/A Product Reliability Manager) had made available to him, by his supervisor, the NEISS data.

71. Although the NEISS data had been provided to him, and he knew that it concerned injuries related to golf car use, Textron's Product Liability Manager made no attempt

to review this information or any effort to understand the information contained in the NEISS data.

72. After his supervisor's death in 1999, Textron's Product Liability Manager made no attempt to monitor or review the NEISS data nor did he request that any other employee of Textron review the NEISS data to consider information regarding golf car injuries in the United States although he knew that this data contained reports of injuries involving golf cars.

73. At all times relevant to the matters set forth in the Complaint, the NEISS data documented an increasing number of falls off the rear of golf cars requiring emergency room visits.

74. The NEISS data documenting falls off golf cars would have been of assistance to Textron's reliability engineer and a responsible manufacturer in evaluating whether a warning should be placed on the rear of golf cars.

75. In July of 2003, Textron received notice that an individual had fallen off the rear platform of a golf car sustaining a fatal injury.

76. Textron's senior associate general counsel took over the investigation of this incident.

77. As part of his investigation of the incident, Textron's senior associate general counsel corresponded with a representative of the decedent's family.

78. The decedent's family asked Textron to consider placing a warning on the rear of Textron's golf cars.

79. In his communications with the representative of the decedent's family, Textron's senior associate general counsel was not forthcoming and truthful about Textron's intention to evaluate the accident and need for a warning on the back of the golf car.

80. The representative of the decedent's family sent Textron's associate general counsel a description of the accident on at least two occasions.

81. Textron's senior associate general counsel represented to the decedent's family that Textron would facilitate a discussion among the members of the National Golf Car Manufacturer's Association and ANSI Committee to determine whether a warning should be added to the rear of golf cars.

82. Textron's senior associate general counsel failed to provide Textron's representative at NGCMA and ANSI with a copy of the correspondence outlining the facts of the accident to bring to the members of the National Golf Car Manufacturer's Association.

83. Because he did not understand the circumstances of the accident because he had not been provided with information in the possession of Textron's senior associate general counsel, Textron's representative did not engage in a meaningful discussion with the National Golf Car Manufacturer's Association and ANSI.

84. Textron's senior associate general counsel misrepresented certain facts to the decedent's family.

85. The Consumer Product Safety Commission conducted an investigation into this accident.

86. As part of its investigation, the Consumer Product Safety Commission corresponded with Textron's senior associate general counsel.

87. In his correspondence with the Consumer Product Safety Commission, Textron's senior associate general counsel misrepresented Textron's knowledge regarding the facts of the accident, and knowledge within Textron and misrepresented information Textron's communications with the decedent's family.

88. Textron's conduct in regard to its communications with the decedent's family and with the Consumer Product safety Commission was designed to avoid a meaningful investigation into the facts surrounding the decedent's accident and to thwart the investigation by the Consumer Product Safety Commission.

89. Other than his communications with the decedent's family and the Consumer Product Safety Commission, Textron's senior associate general counsel conducted no other investigation into this incident or the need for a warning on the back of golf cars, nor did he lead an investigation by any other employees at Textron.

90. Despite receiving notice of this fatality, Textron's reliability engineer did not conduct any investigation into the facts of the accident.

91. Despite receiving notice of this fatality, Textron's reliability engineer made no attempt to discuss with associate general counsel the information he would need to evaluate a proposed warning as suggested by the family of the decedent.

92. Despite receiving notice of this fatality, Textron and its reliability engineer did not undertake any analysis or perform any investigation into the feasibility of placing a warning on the rear of Textron's golf cars as suggested by the family of the decedent.

93. Despite receiving notice of this fatality, Textron and its reliability engineer did not conduct any investigation into whether similar accidents had occurred in the past.

94. Despite receiving notice of this fatality, Textron and Textron's reliability engineer did not speak with any individuals in the field including golf course managers, salesmen, employees of Textron to determine the regularity with which individuals rode on the rear of golf cars.

95. At all times relevant to the matters set forth in the Complaint, Textron had a duty to warn users of risks associated with the foreseeable uses of its products including a continuing to duty to warn after the sale of the subject golf car.

96. At all times relevant to the matters set forth in the Complaint, Textron had sufficient information available to it and knew or should have known that it was foreseeable that individuals rode on the rear platform of its golf cars and that by doing so they exposed themselves to a significant risk of severe bodily injury and/or death.

97. Despite the availability of this information and despite Textron's knowledge that this information was available to it, Textron failed to place a warning on the rear platform of its golf cars.

98. Textron ignored information available to it, misrepresented its knowledge and information that it had available to it and failed to act as a reasonable manufacturer with respect to information it had available to it regarding the foreseeable use of its product.

99. Textron's conduct at all times relevant to the complaint was wanton, malicious or oppressive.

100. Textron was aware at all times that its actions caused a great risk of harm to users of its golf cars.

101. Textron's conduct is set forth above, resulted in its product being defective and unreasonably dangerous and its misrepresentations and conduct as set forth above resulted in and was a proximate cause of damages to Roderick Jenks and Melissa Jenks.

WHEREFORE Roderick Jenks prays for judgment against Textron, Inc. in an amount within the minimum and maximum jurisdictional limits of the court, for enhanced damages, plus statutory interest, attorney's fees and costs.

COUNT V
Damages Against Each Defendant

102. Plaintiffs repeat and restate the allegations set forth in paragraphs 1 – 61 of the Complaint as if fully set forth herein.

103. As a direct and proximate result of the conduct of each Defendant, Roderick has suffered serious and permanent injuries and shock to his body and nervous system, which resulted in permanent brain damage, causing him to suffer extreme physical pain, mental suffering and impairment of his ability to lead a normal life, all to his general damage in an amount within the jurisdiction of this court.

104. As a result of the conduct of each Defendant, Roderick has incurred expenses for medical hospital, nursing, rehabilitative and related services in an amount not yet ascertained, but which will be determined according to proof of trial. Roderick alleges that he will have a continuing need for such services for the rest of his life and will incur undetermined financial obligations in the future to pay for such care.

105. As a further result of the conduct of each Defendant, Roderick is unable to work and has lost wages in the amount yet to be ascertained. Roderick alleges that he is permanently disabled as a result of the injuries he received in the accident and his earning capacity has been totally impaired, which will cause him to lose the value of wages and income that would have been earned in the future, in an amount not yet ascertained.

WHEREFORE Roderick Jenks prays for judgment against each Defendant in an amount within the minimum and maximum jurisdictional limits of the court, plus statutory interest, attorney's fees and costs.

COUNT VI
Loss of Consortium by Melissa Jenks

106. Plaintiffs repeat and restate the allegations set forth in paragraphs 1 – 65 of the Complaint as if fully set forth herein.

107. Melissa Jenks is the lawful spouse of Roderick Jenks and was the lawful spouse of Roderick Jenks on July 16, 2006.

108. Prior to July 16, 2006, Melissa and Roderick enjoyed an intimate and loving emotional and physical relationship.

109. Prior to July 16, 2006, Melissa and Roderick were self-supporting members of their family and each could care for themselves.

110. Following the traumatic injury to Roderick on July 16, 2006, the physical and emotional relationship between Melissa and Roderick was greatly harmed. A normal husband and wife relationship became impossible.

111. Melissa, when not working outside the home, became the caretaker for Roderick. She traveled to see him in the hospital and at the rehabilitation centers.

112. When Roderick returned home from the rehabilitation center, she assisted him with his day to day physical needs. This loving and caring relationship continues.

113. In addition to caring for his physical needs, Melissa transports Roderick to medical appointments, shopping trips, excursions to local areas and other such activities.

114. It is expected that Roderick will require Melissa to care for him for the rest of his life.

115. As a result of the negligence and conduct of the named defendants and “John Doe, Inc.,” the unknown gold cart manufacturer, the marital relationship of Melissa and Roderick has been irreparably damaged.

116. As a result of the negligence and conduct of the named defendants and “John Doe, Inc.” Melissa has incurred and will continue to incur excessive out of pocket expenses for the medical, mental and physical care of Roderick.

WHEREFORE Melissa Jenks prays for judgment against each Defendant and John Doe, Inc. in an amount within the minimum and maximum jurisdictional limits of the court, plus statutory interest, attorney’s fees and costs.

Prayer for Relief

WHEREFORE, the Plaintiffs respectfully request this Honorable Court grant the following relief:

- A) Assume jurisdiction of this case;
- B) Award the Plaintiffs compensatory damages against the Defendants;
- C) Award the Plaintiffs enhanced compensatory damages;
- D) Award Plaintiff his just and reasonable costs, interest, expenses and attorney’s fees; and
- E) Grant such other relief as may be just, equitable and appropriate.

Respectfully submitted,

MELISSA JENKS, G/N/F OF RODERICK
JENKS AND MELISSA JENKS,
INDIVIDUALLY,

Dated: July 13, 2012

By: /s/ Daniel R. Mawhinney
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CERTIFICATE OF SERVICE

I, Daniel R. Mawhinney, Esq., hereby certify that on July 13, 2012, a copy of the within document was filed with the court using the ECF system, which will send notification of such filing to all counsel of record.

/s/ Daniel R. Mawhinney

Daniel R. Mawhinney, Esq.