

IN THE CIRCUIT COURT OF TANEY COUNTY, MISSOURI

MICHELLE CHAFFER,)
REBEKAH WHITTINGTON, AND)
CHRISTINA TAYLOR)

Plaintiffs,)

v.)

CASE NO.

RIDE THE DUCKS)
INTERNATIONAL, LLC)
SERVE: CAPITOL CORPORATE)
SERVICES, INC.)
222 E. DUNKLIN ST., SUITE 102)
JEFFERSON CITY, MO 65101)

and)

RIPLEY ENTERTAINMENT, INC.)
SERVE: CT CORPORATION)
SYSTEM)
120 SOUTH CENTRAL AVE.)
CLAYTON, MO 63105)

and)

KENNETH MCKEE)

and)

ROBERT WILLIAMS (Deceased))

Defendants.)

PLAINTIFFS' WRONGFUL DEATH PETITION FOR DAMAGES

COME NOW Plaintiffs Michelle Chaffer, Rebekah Whittington and Christina Taylor, by and through their counsel of record, and for their Wrongful Death Petition for Damages against

Defendants, Ride The Ducks International, LLC, Ripley Entertainment, Inc, Kenneth McKee and Robert Williams, state and allege as follows:

PARTIES, JURISDICTION AND VENUE

1. William and Janice Bright (“Decedents”) were, at all relevant times, citizens and residents of the State of Missouri and died on or about July 19, 2018 in Taney County, Missouri as a result of the negligent acts and omissions alleged herein.

2. Plaintiffs Michelle Chaffer, Rebekah Whittington and Christina Taylor are the natural daughters of William and Janice Bright, and as such, are members of the statutory class of beneficiaries identified in R.S.MO. § 537.080 (2000).

3. Plaintiffs Michelle Chaffer, Rebekah Whittington and Christina Taylor are citizens and residents of the State of Missouri.

4. Defendant, Ride The Ducks International, LLC. (hereinafter “RTDI”)¹, is a for-profit corporation organized and existing under the laws of the State of Missouri. At all relevant times, Defendant, RTDI, was engaged in the business of designing, modifying, building and or constructing DUKW (pronounced Duck) amphibious vehicles. In addition, at all relevant times, Defendant, RTDI, was engaged in the business of providing guided land and water tours utilizing its modified DUKW boats, including tours on Table Rock Lake in Taney County, Missouri. Defendant, RTDI, can be served with process through its Registered Agent at the above-captioned address.

5. Defendant, Ripley Entertainment, Inc. is a for-profit corporation organized and existing under the laws of the State of Delaware. Defendant Ripley Entertainment purchased RTDI

¹ RTDI designed and manufactured DUKW boats through Amphibious Vehicle Manufacturing and Ride the Ducks of Branson. Both of these companies merged with RTDI in 2005 and simply became Ride The Ducks International, LLC.

in 2017. At all relevant times, Defendant, Ripley Entertainment, was engaged in the business of designing, modifying, building and or constructing DUKW (pronounced Duck) amphibious vehicles. In addition, at all relevant times, Defendant, Ripley Entertainment, was engaged in the business of providing guided land and water tours utilizing its modified DUKW boats, including tours on Table Rock Lake in Taney County, Missouri. Defendant, Ripley Entertainment, can be served with process at the above-captioned address.

6. Defendant Kenneth McKee, upon information and belief is a citizen and resident of the State of Missouri. At all times relevant, on information and belief, Defendant Kenneth Mckee was employed by Defendant RTDI and/or Defendant Ripley Entertainment to operate “Stretch Duck 07”, the subject Duck Boat.

7. Defendant Robert Williams, upon information and belief is a citizen and resident of the State of Missouri. At all times relevant, on information and belief, Defendant Robert Williams was employed by Defendant RTDI and/or Defendant Ripley Entertainment to co-captain “Stretch Duck 07”, the subject Duck Boat.

8. Pursuant to R.S.MO. § 508.010.4 (R.S.MO. Supp. 2014), venue is proper in Taney County, Missouri, in that Decedents were first injured by the wrongful and negligent acts of Defendants in Taney County, Missouri.

9. Table Rock Lake is non-navigable for purposes of interstate commerce and, therefore state law applies and not maritime law. *Edawrds Hurtel*, 717 F.2d 1204 (8th Cir. 1983)(“The recreational nature of Table Rock Lake is generally known within the territorial jurisdiction of this Court. * * * [T]he lake has not been susceptible of use for commercial shipping and in fact has been used *exclusively* [emphasis added] for recreational activities. * *

* Furthermore, there is no reasonable likelihood that Table Rock Lake will become or be made navigable in the near future.”.

AGENCY

10. At all relevant times, Defendants, RTDI and/or Ripley Entertainment, were acting by and through their ostensible employees and agents, including, but not limited to, Defendants Kenneth McKee and Robert Williams.

11. At all relevant times, Defendant Kenneth McKee and Robert Williams, were acting within the course and scope of their employment and/or agency for Defendant RTDI and/or Defendant Ripley Entertainment.

FACTS RELEVANT TO ALL CLAIMS

A. The DUKW “Stretch Duck 07”

12. A DUKW (pronounced “duck”) is an amphibious landing vehicle that was designed to transport military personnel and supplies for the U.S. Army during World War II. The vehicles were designed in 1942 to make beach landings and then to proceed onshore to provide limited troop transportation away from the beachhead.

13. The DUKW was built with a limited life expectancy of only a few months due to the accelerated production schedule and simplified hull construction.

14. The DUKW’s military configuration was based on a 2 ½ ton 6x6 truck chassis with an overall hull length of 31 feet.

15. A little over 21,000 DUKW’s were produced and after the war, many units were sold as “surplus”.

16. In approximately 1996, Robert McDowell, the previous owner of RTDI², began converting the military DUKW's into what he termed "Stretch Ducks".

17. Most of the work was done through "Amphibious Vehicle Manufacturing", a Branson, Mo company that was merged into RTDI.

18. Robert McDowell, despite having no engineering, design or other mechanical training, designed the Subject Stretch Duck 07.

19. In a previous deposition, Mr. McDowell admits that he simply got some ideas by consulting with a football coach, someone at the auto parts store and someone at a U-Haul store.

20. The subject Stretch Duck 007 was modified by Defendant RTDI (Through McDowell) and/or Ripley Entertainment, whereby the length of the hull was extended by 2 feet to make room for additional passengers.

B. The Tragic, But Avoidable History of Duck Boats

21. The U.S. Coast Guard Data shows that, between March 1991 and May 1999 at least 18 amphibious vehicles were involved in accidents and that at least six involved flooding.

22. Since 1999 at least 39 men, women and children have been killed in Duck Boat vehicles.

23. On May 1, 1999, a DUKW named "Miss Majestic", the same model involved in this case, rapidly sank in Lake Hamilton, Arkansas, just seven minutes after entering the water. Thirteen passengers, including 3 children were killed. The DUKW sank in less than 30 seconds after the boat operator recognized that the vehicle was in distress.

24. The National Transportation Safety Board ("NTSB") investigated the deaths and made multiple findings, including:

² RTDI was purchased by Ripley Entertainment in 2017.

- a. The design of the DUKW was flawed because it did not contain adequate reserve buoyancy. Reserve buoyancy is the internal volume of a vessel that is not flooded or capable of being flooded;
- b. The DUKW contained no bulkheads (areas sealed off from flooding) or other buoyancy devices to prevent the vessel from sinking;
- c. The overhead canopy on the DUKW contributed to the “high loss of life” because it acted as a “trap” as the vehicle was submerged;
- d. Even if personal flotation devices had been used, the passengers would have been sucked up against and trapped by the overhead canopy;
- e. DUKWs “have features which make them inherently less safe than conventional passenger vessels.”;
- f. “on amphibious passenger vehicles that cannot remain afloat when flooded, canopies represent an unacceptable risk to passenger safety.”;

25. As a result of the investigation, the NTSB hired JMS Naval Architects and Salvage Engineers (“JMS”) of Groton, Connecticut to determine the feasibility of making a DUKW capable of staying afloat, even when fully flooded.

26. JMS determined that a DUKW, carrying up to 28 passengers and an operator could stay afloat, *even if fully flooded*, by simply adding bulkheads.

27. A bulkhead is a water-tight wall within the hold of a boat. If part of the boat becomes flooded, the watertight bulkhead will retain air, thus keeping the boat afloat.

28. Bulkheads are not new technology. Texts written by Western writers such as Marco Polo (1254–1324), Niccolò Da Conti (1395–1469), and Benjamin Franklin (1706–1790) describe the bulkhead partitions of East Asian shipbuilding from the 12th Century.

29. As a result of the Miss Majestic investigations and findings by JMS, the NTSB held a meeting in Memphis, Tennessee on December 8th and 9th of 1999. The NTSB invited the Coast Guard, State governments, and DUKW boat operators, including Defendant RTDI.

30. The topics of discussion included: Passenger egress and survival, lifesaving equipment, and the flooding characteristics of DUKWs.

31. At the conference, a representative from JMS made a presentation on the flooding characteristics of DUKWs, as well as available alternative designs which would prevent the DUKW from sinking, even when flooded. The JMS representative estimated the cost of this would be roughly \$2,000.

32. On February 8, 2000, as a result of the Miss Majestic disaster and information learned at the Memphis conference, The NTSB issued a safety bulletin to Ride The Ducks and other DUKW users. The safety bulletin, labeled M-00-5, stated the following:

Without delay, alter your amphibious passenger vehicles to provide reserve buoyancy through passive means, such as watertight compartmentalization [bulkheads], built in flotation, or equivalent measures, so that they will remain afloat and upright in the event of flooding, even when carrying a full compartment of passengers and crew.

33. In response to this warning, Defendant RTDI responded to the NTSB and claimed that it was building an aluminum DUKW that incorporated foam buoyancy into the design and that it would meet the criteria outlined in the NTSB safety bulletin M-00-5.

34. For unknown reasons, Defendant RTDI chose not to follow through with its promise, but instead has continued to operate DUKWs that have been deemed unsafe and a hazard to human life.

35. One company, Cool Stuff out of South Carolina, responded to the Safety Bulletin by designing an all new “sink-proof” amphibious vehicle called the Hydra-Terra. The Hydra-Terra can remain afloat ***even with all of the drain plugs removed and the engine compartment is***

flooded. The Hydra-Terra can do all of this while hauling a load of 49 passengers and two crew members. The Coast Guard has tested the Hydra-Terra and has certified it for safe use.

36. At the same time that the NTSB was conducting its investigation of the Miss Majestic disaster, the U.S. Coast Guard was similarly conducting its own investigation.

37. As part of its investigation, The U.S. Coast Guard determined that:

- a. The primary means of escape on a DUKW boat is over the side, which is counterintuitive because entry on the vessel is at the stern. Most passengers perceive that escape is through the stern, but most DUKW boats tend to sink stern-first;
- b. “Adequate egress is a major issue with DUKW vehicles”;
- c. “If side windows or curtains are installed they should not cause an impediment to passenger egress”;
- d. In the case of a sinking DUKW, “the windshield can entrap passengers.”;
- e. The vinyl side windows “trapped” passengers as the DUKW sank;

38. As was the case with the NTSB, the U.S. Coast Guard realized that changes were needed to the DUKW boats. As a result, The U.S. Coast Guard held a two day meeting in February of 2000. The U.S. Coast Guard invited DUKW boat owners/users, including Defendant RTDI.

39. As a result of the meeting, Defendant RTDI and other DUKW operators agreed that a National Standard was needed for the safe operation of DUKW boats.

40. Despite RTDI’s promises and assurances to the NTSB and the U.S. Coast Guard, it did nothing to improve the buoyancy of its DUKW boats. Just a little over a year after the Miss Majestic tragedy, one of Defendant RTDI’s DUKW boats sank in Lake Union, Washington. As the DUKW took on water, the operator failed to tell the passengers to don their life vests.

Fortunately, the boat was carrying a light load of 11 passengers and all were able to escape before the DUKW sank.

41. A few months after the Lake Union event, the NTSB issued yet another warning which provided that, “Until such time that owners provide sufficient reserve buoyancy in their amphibious passenger vehicles so that they will remain upright and float in a fully flooded condition (by M-02-1), require the following:”

- a. ***Removal of canopies;***
- b. Reengineer ***every*** amphibious vehicle to permanently close unnecessary access plugs;
- c. Install four independently powered bilge alarms;
- d. Install independently powered bilge pumps capable of dewatering the craft at the volume of the largest remaining penetration;
- e. ***Where canopies have been removed*** on vehicles that do not have adequate reserve buoyancy, ***require that passengers wear life jackets at all times during waterborne operations.***

42. Defendant RTDI failed to comply with the warnings by the NTSB or the U.S. Coast Guard and in 2010 another of Defendant RTDI’s DUKW boats sank, killing two and injuring twenty-six.

43. On July 7, 2010, Defendants’ DUKW 34 was transporting 35 passengers on the Delaware River in Philadelphia when the operator believed he smelled smoke. In response, the operator anchored and shut the engine off. The operator failed to inform the passengers to put on life vests. As DUKW 34 sat anchored in the water, a tug boat collided with it.

44. It was later discovered that the cap on DUKW 34's surge tank was not properly secure, which allowed water to rush into the engine compartment and because DUKW 34 lacked bulkheads, the boat quickly sank.

45. As part of its investigation the NTSB discovered several deficiencies associated with Defendant RTDI:

- a. DUKW 34's Operator failed to properly debrief the passengers on the use of lifejackets and escape pursuant to 46 CFR 185.506 and NVIC 01-01;
- b. The DUKW Operator did not properly prepare the passengers for the risk they faced by having them don lifejackets while awaiting a tow”;
- c. “The effectiveness of the company's internal audits in ensuring adherence to written safety procedures *became questionable* on the day of the accident . . .”;
- d. “If a more effective safety culture existed at Ride The Ducks . . . , these and other noted systematic failures to properly execute company safety procedures may have been detected.”;

46. In conclusion, the NTSB determined that “Ride The Ducks International review its existing safety management program and develop improved means to ensure the company's safety and emergency procedures are understood and adhered to by employees in safety-critical positions.”

47. In response to the investigation, Defendant RTDI shut down all operations and claimed it would re-train all employees on appropriate safety and emergency response procedures.

48. Unfortunately, the death toll continued to climb for Defendant RTDI:

- A. In 2015 five college students were killed and 69 others were injured in Seattle during a RTDI Tour. Defendant RTDI was fined \$500,000 for safety violations;

B. Also in 2015 a Duck Boat killed a woman in Philadelphia;

C. In 2016, a duck boat killed a woman in Boston.

49. Most notably is an event that happened in 2015 on the Delaware River in Philadelphia. On October 3, 2015 at approximately 3 p.m., one of Defendant RTDI's DUKW boats was transporting passengers on the Delaware River and failed to abort the tour, despite worsening weather and river conditions. As the boat made a turn, a 3-4 foot wave came over the bow, causing the boat to take on water and it stalled the engine. Fortunately, no passengers were killed.

50. The U.S. Coast Guard investigated and found that Defendant RTDI's employees "failed to anticipate the change in the weather conditions."

C. The Branson Tragedy

51. On Thursday July 19, 2018, William and Janice Bright were in Branson, Missouri celebrating their 45th wedding anniversary.

52. William and Janice, parents of three girls and grandparents to 16, had a lot to celebrate after 45 years of marriage.

53. While on their anniversary trip in Branson, they decided to take a Duck Boat Tour on one of Defendant RTDI's DUKW boats.

54. While the trip was scheduled to leave at 5:30 p.m., the trip was delayed because a companion DUKW boat had maintenance issues and those passengers had to switch to another boat.

55. At 6:27 p.m., just **5 minutes** before the Severe Thunderstorm Warning was announced, Defendants McKee and Williams boarded the Subject Stretch Duck 07.

56. At 6:28 p.m., an unknown representative from Defendant RTDI and/or Defendant Ripley Entertainment briefly entered the craft and instructed McKee and Williams to alter their course and do the water portion first.

57. At 6:29, William and Janice Bright, along with the other passengers began boarding the vessel.

58. As passengers boarded, the Captain mentioned that he had looked at the weather radar.

59. At 6:33 p.m., **one minute after** the Severe Thunderstorm Warning was announced for Table Rock Lake, all passengers were loaded and the Subject Stretch Duck 07 headed towards the boat ramp.

60. At 6:55 p.m., **nearly 20 minutes after** the Severe Thunderstorm Warning was announced for Table Rock Lake, the Subject Stretch Duck 07 entered the water.

61. At this point, even a casual glance at the weather radar would have shown that the Severe Storm was just minutes from their location.

62. Between 6:56 p.m. and 7 p.m., the Captain allowed four different children to sit in the driver's seat while he observed.

63. At 7:00:25, whitecaps appeared on the water and winds increased.

64. At 7:00:42, the Captain lowered the plastic side curtains over the windows on both sides of the vessel, impeding escape through the windows.

65. At 7:04:15, the bilge alarm sounded, indicating that the vessel was taking on water.

66. At 7:08:27, the onboard recorder ceased working.

67. Despite six hours of advanced warning that a deadly storm was rapidly approaching, Defendant RTDI, nonetheless, chose to risk the lives of William and Janice by moving forward with the water portion of the tour.

68. Stretch Duck 07, began to take on water and sank within a short distance from land.

69. William and Janice Bright were among 17 people who were caught in the boat and drowned.

D. The “Storm That Came Out of Nowhere”

70. Defendant Ripley Entertainment’s President, Jim Pattison, Jr., admits that Stretch Duck 07 “shouldn’t have been in the water” that evening. Mr. Pattison, however, claims that the storm was unpredictable and “came out of basically nowhere.”.

71. Contrary to Mr. Pattison’s assertion, this storm had been predicted for *days* prior to the evening of Thursday, July 19, 2018.

72. At 11:20 a.m., the National Weather Service issued a Severe Thunderstorm Watch *for Table Rock Lake* until 9 p.m. that night.

73. At 5:45 p.m., the National Weather Service issued a Severe Thunderstorm **Warning**, for Barry County, which is just to the northwest of Table Rock Lake. Radar tracking for the storm showed that the storm would head southeast, *directly over Table Rock Lake*.

74. At 6:07 p.m., another Severe Thunderstorm **Warning** was issued for northern Stone County. Table Rock Lake is situated in the southern part of Stone County and radar predictions continued to show that Table Rock Lake was in the direct path of the fast moving storm.

75. At 6:15 p.m., the National Weather Service issued a Severe Weather Statement, indicating that the storm was moving at 65 mph and was capable of producing **70 mph wind gusts**.

76. At 6:32 p.m., the National Weather Service issued a Severe Thunderstorm **Warning for Table Rock Lake.**

77. Despite Mr. Pattison's assertions, the on-board recorder demonstrates that, not only did this storm *not* come "out of nowhere", his employees were aware of the storm and chose to gamble the lives of their passengers.

E. Defendants Tried To Beat The Storm

78. Defendants were well aware of the approaching storm, but rather than lose out on profit, they chose to try and beat the storm.

79. The Duck Boat Tour is typically 70 minutes long, half on land and half in the water, but due to the approaching storm, Defendants elected to alter and shorten the water portion in an attempt to beat the storm.

80. Unfortunately, a maintenance issue delayed the departure of the Duck boats and as a result, Defendants' plan to get in the water and out before the storm reached them, failed.

81. The Subject Stretch Duck 07 didn't enter the water until 20 minutes *after* the Severe Thunderstorm Warning was announced. At this point, the storm was not longer a possible event, instead it became an *imminent threat* and it certain did not "come out of nowhere."

82. As one meteorologist aptly put it, "this is 2018, not 1901."

83. The Subject Stretch Duck 07 was only a few minutes from land when it took on water and sank. Had Defendants aborted the water portion of the cruise at the start or at the very least turned back as weather reports got worse, 17 lives would not have been taken that evening.

COUNT I—STRICT LIABILITY

(Wrongful Death vs. Defendant RTDI)

84. Plaintiffs hereby incorporate by reference the allegations set forth in the preceding paragraphs, as if fully set forth herein.

85. At all times herein, Defendant RTDI was actively engaged in the business of designing, manufacturing, and modifying DUKW amphibious vehicles, including the subject Stretch Duck 07.

86. Defendant RTDI designed, manufactured, and modified the subject Stretch Duck 07 in the normal course of its business.

87. At the time of the subject event, the Stretch Duck 07 was being used in a manner reasonably anticipated and intended by Defendant RTDI.

88. At the time of the subject event, the Subject Stretch Duck 07 was defective and unreasonably dangerous.

89. Defendant RTDI knowingly, negligently and recklessly designed, manufactured, and modified the Subject Stretch Duck 07, in a defective and unreasonably dangerous condition.

90. The Subject Stretch Duck 07 was defective and unreasonably dangerous when put to a reasonably anticipated use in that:

- a. The Subject Stretch Duck 07 was not seaworthy;
- b. The roof and/or overhead canopy on the Subject Stretch Duck 07 was known to trap passengers in the event that the vessel sank;
- c. The Subject Stretch Duck 07 lacked sufficient reserve buoyancy so as to stay afloat in the event that the vessel took on water;
- d. The Subject Stretch Duck 07 lacked bulkheads which would add reserve buoyancy in the event that the vessel took on water;

- e. The Subject Stretch Duck 07 lacked sufficient built-in-flotation which would add to reserve buoyancy in the event that the vessel took on water;
- f. The Subject Stretch Duck 07 contained an overhead roof and/or canopy which trapped passengers from escape;
- g. The Subject Stretch Duck 07 lacked sufficient bilge pumps to adequately remove water as the vessel was flooded;
- h. The Subject Stretch Duck 07 lacked sufficient locations for passenger egress in the event that the vessel took on water;
- i. The Subject Stretch Duck 07's design limited passenger egress in an emergency, including but not limited to: Window height, aisle width, seating space, overhead roof and/or canopy, coverings over the windows, location of Personal Flotation devices, number of Personal Flotation Devices and type of Personal Flotation Devices;
- j. The location of the exhaust on the Subject Stretch Duck 07 allowed water to enter the exhaust and flood the engine;
- k. The engine hatch or hood on the Subject Stretch Duck 07 can allow water to enter the engine compartment and flood the engine;
- l. The Subject Stretch Duck 07's main bilge pump operates only when the engine is running, so that when the engine is flooded, the vessel lacks sufficient bilge pumps to keep the vessel from sinking;
- m. The Stretch Duck 07 was not equipped with the appropriate on-board weather notification systems to alert the Captain of inclement weather;

- n. Defendant RTDI did not provide reasonable and adequate warnings to consumers of the propensity of DUKW boats to sink in a reasonably foreseeable event;
- o. Defendant RTDI did not provide reasonable and adequate warnings on the methods of egress should the boat take on water;
- p. Defendant RTDI did not provide reasonable and adequate warnings that the roof and/or overhead canopy could trap and drown passengers in the event that the boat took on water;
- q. Defendant RTDI did not provide reasonable and adequate warnings concerning the use of Personal Flotation Devices for passengers or their children;
- r. Defendant RTDI did not provide reasonable and adequate warning to passengers that DUKW boats are not intended to be used in inclement weather due to their tendency to take on water and sink;
- s. Defendant RTDI did not provide reasonable and adequate warning that Stretch Duck 07 was prohibited by the U.S. Coast Guard from operating in the water during certain weather conditions;
- t. Defendant RTDI did not provide reasonable and adequate warning to passengers regarding the Severe Thunderstorm Watch and/or Severe Thunderstorm Warning;
- u. Defendant RTDI did not reasonably and adequately test the Subject Stretch Duck 07 before and during the design, engineering, modification and production phase prior to putting them in use to the public;

v. The Subject Stretch Duck 07 was designed without components to make it safe for its intended use.

91. As a direct and proximate result of the defective and unreasonably dangerous condition of the Subject Stretch Duck 07, William and Janice Bright sustained fatal injuries that resulted in their deaths.

92. As a direct and proximate result of the Subject Stretch Duck 07 being operated without adequate warnings, William and Janice Bright sustained fatal injuries that resulted in their deaths.

93. Pursuant to R.S.Mo. § 537.090, Plaintiffs suffered the following damages:

- a. pecuniary losses suffered by reason of decedents William and Janice Bright's deaths;
- b. funeral expenses;
- c. the reasonable value of services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support; and
- d. the damages that William and Janice Bright, decedents, suffered between the time of their injuries and the time they died, for which Decedents would have maintained an action had they survived.

94. Prior to the event, Defendant RTDI knew that Stretch Duck 07 lacked sufficient reserve buoyancy, so that in the event that the vessel took on water, it was likely to sink.

95. Prior to the event, Defendant RTDI knew that Stretch Duck 07's roof and/or overhead canopy could trap and drown passengers.

96. Prior to the event, Defendant RTDI knew that there was a rapidly approaching, severe thunderstorm.

97. Prior to the event, Defendant RTDI knew that the U.S. Coast Guard's Certification on Stretch Duck 07 prevented the vessel from entering the waters under such conditions or even if such conditions were predicted to occur during the trip.

98. Prior to the event, Defendant RTDI knew that, in certain weather conditions, water could enter the exhaust and/or the engine hood/vent, causing the engine to stall out.

99. Prior to the event, Defendant RTDI knew that if the engine stalled out, then the main bilge pump would cease operation and the boat was likely to sink.

100. Prior to the event, Defendant RTDI knew that there was a lack of proper egress locations for passenger in the event of an emergency due to aisle width, distance between the seats, cramped quarters, window height, window coverings, and overhead roof.

101. Prior to the event Defendant RTDI knew of the defective and dangerous nature of DUKW boats and was on notice of persons seriously injured or killed in a similar manner as the subject incident.

102. Defendant RTDI knew or should have known of the defective and dangerous conditions of the Subject Stretch Duck 07 and such conditions would severely injure or kill users. Defendant RTDI's conduct showed complete indifference to or conscious disregard for the safety of others, including decedents William and Janice Bright, justifying the imposition of punitive damages in an amount to punish Defendant and to deter it and others from like conduct.

WHEREFORE, Plaintiffs request for this Court to enter a judgment against Defendant RTDI for a reasonable sum of money for damages in excess of \$25,000.00 that will fairly and justly compensate for the damages suffered, for punitive damages, costs, interests, fees, attorney's fees, and any other relief that the Court may deem proper.

COUNT II—STRICT LIABILITY

(Wrongful Death vs. Defendant Ripley Entertainment)

103. Plaintiffs hereby incorporate by reference the allegations set forth in the preceding paragraphs, as if fully set forth herein.

104. At all times herein, Defendant Ripley Entertainment was actively engaged in the business of designing, manufacturing, and modifying DUKW amphibious vehicles, including the subject Stretch Duck 07.

105. Defendant Ripley Entertainment designed, manufactured, and modified the subject Stretch Duck 07 in the normal course of its business.

106. At the time of the subject event, the Stretch Duck 07 was being used in a manner reasonably anticipated and intended by Defendant Ripley Entertainment.

107. At the time of the subject event, the Subject Stretch Duck 07 was defective and unreasonably dangerous.

108. Defendant knowingly, negligently and recklessly designed, manufactured, and modified the Subject Stretch Duck 07, in a defective and unreasonably dangerous condition.

109. The Subject Stretch Duck 07 was defective and unreasonably dangerous when put to a reasonably anticipated use in that:

- a. The Subject Stretch Duck 07 was not seaworthy;
- b. The roof and/or overhead canopy on the Subject Stretch Duck 07 was known to trap passengers in the event that the vessel sank;
- c. The Subject Stretch Duck 07 lacked sufficient reserve buoyancy so as to stay afloat in the event that the vessel took on water;
- d. The Subject Stretch Duck 07 lacked bulkheads which would add reserve buoyancy in the event that the vessel took on water;

- e. The Subject Stretch Duck 07 lacked sufficient built-in-flotation which would add to reserve buoyancy in the event that the vessel took on water;
- f. The Subject Stretch Duck 07 contained an overhead roof and/or canopy which trapped passengers from escape;
- g. The Subject Stretch Duck 07 lacked sufficient bilge pumps to adequately remove water as the vessel was flooded;
- h. The Subject Stretch Duck 07 lacked sufficient locations for passenger egress in the event that the vessel took on water;
- i. The Subject Stretch Duck 07's design limited passenger egress in an emergency, including but not limited to: Window height, aisle width, seating space, overhead roof and/or canopy, coverings over the windows, location of Personal Flotation devices, number of Personal Flotation Devices and type of Personal Flotation Devices;
- j. The location of the exhaust on the Subject Stretch Duck 07 allowed water to enter the exhaust and flood the engine;
- k. The engine hatch or hood on the Subject Stretch Duck 07 can allow water to enter the engine compartment and flood the engine;
- l. The Subject Stretch Duck 07's main bilge pump operates only when the engine is running, so that when the engine is flooded, the vessel lacks sufficient bilge pumps to keep the vessel from sinking;
- m. The Stretch Duck 07 was not equipped with the appropriate on-board weather notification systems to alert the Captain of inclement weather;

- n. Defendant Ripley Entertainment did not provide reasonable and adequate warnings to consumers of the propensity of DUKW boats to sink in a reasonably foreseeable event;
- o. Defendant Ripley Entertainment did not provide reasonable and adequate warnings on the methods of egress should the boat take on water;
- p. Defendant Ripley Entertainment did not provide reasonable and adequate warnings that the roof and/or overhead canopy could trap and drown passengers in the event that the boat took on water;
- q. Defendant Ripley Entertainment did not provide reasonable and adequate warnings concerning the use of Personal Flotation Devices for passengers or their children;
- r. Defendant Ripley Entertainment did not provide reasonable and adequate warning to passengers that DUKW boats are not intended to be used in inclement weather due to their tendency to take on water and sink;
- s. Defendant Ripley Entertainment did not provide reasonable and adequate warning that Stretch Duck 07 was prohibited by the U.S. Coast Guard from operating in the water during certain weather conditions;
- t. Defendant Ripley Entertainment did not provide reasonable and adequate warning to passengers regarding the Severe Thunderstorm Watch and/or Severe Thunderstorm Warning;
- u. Defendant Ripley Entertainment did not reasonably and adequately test the Subject Stretch Duck 07 before and during the design, engineering, modification and production phase prior to putting them in use to the public;

- v. The Subject Stretch Duck 07 was designed without components to make it safe for its intended use;.

110. As a direct and proximate result of the defective and unreasonably dangerous condition of the Subject Stretch Duck 07, William and Janice Bright sustained fatal injuries that resulted in their deaths.

111. As a direct and proximate result of the Subject Stretch Duck 07 being operated without adequate warnings, William and Janice Bright sustained fatal injuries that resulted in their deaths.

112. Pursuant to R.S.Mo. § 537.090, Plaintiffs suffered the following damages:

- a. pecuniary losses suffered by reason of decedents William and Janice Bright's deaths;
- b. funeral expenses;
- c. the reasonable value of services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support; and
- d. the damages that William and Janice Bright, decedents, suffered between the time of their injuries and the time they died, for which Decedents would have maintained an action had they survived.

113. Prior to the event, Defendant Ripley Entertainment knew that Stretch Duck 07 lacked sufficient reserve buoyancy, so that in the event that the vessel took on water, it was likely to sink.

114. Prior to the event, Defendant Ripley Entertainment knew that Stretch Duck 07's roof and/or overhead canopy could trap and drown passengers.

115. Prior to the event, Defendant Ripley Entertainment knew that there was a rapidly approaching, severe thunderstorm.

116. Prior to the event, Defendant Ripley Entertainment knew that the U.S. Coast Guard's Certification on Stretch Duck 07 prevented the vessel from entering the waters under such conditions or even if such conditions were predicted to occur during the trip.

117. Prior to the event, Defendant Ripley Entertainment knew that, in certain weather conditions, water could enter the exhaust and/or the engine hood/vent, causing the engine to stall out.

118. Prior to the event, Defendant Ripley Entertainment knew that if the engine stalled out, then the main bilge pump would cease operation and the boat was likely to sink.

119. Prior to the event, Defendant Ripley Entertainment knew that there was a lack of proper egress locations for passenger in the event of an emergency due to aisle width, distance between the seats, cramped quarters, window height, window coverings, and overhead roof.

120. Prior to the event Defendant Ripley Entertainment knew of the defective and dangerous nature of DUKW boats and was on notice of persons seriously injured or killed in a similar manner as the subject incident.

121. Defendant Ripley Entertainment knew or should have known of the defective and dangerous conditions of the Subject Stretch Duck 07 and such conditions would severely injure or kill users. Defendant Ripley Entertainment's conduct showed complete indifference to or conscious disregard for the safety of others, including decedents William and Janice Bright, justifying the imposition of punitive damages in an amount to punish Defendant and to deter it and others from like conduct.

WHEREFORE, Plaintiffs request for this Court to enter a judgment against Defendant Ripley Entertainment for a reasonable sum of money for damages in excess of \$25,000.00 that will fairly and justly compensate for the damages suffered, for punitive damages, costs, interests, fees, attorney's fees, and any other relief that the Court may deem proper.

COUNT II—NEGLIGENCE

(Wrongful Death vs. Defendants RTDI and Ripley Entertainment)

122. Plaintiffs hereby incorporate by reference the allegations set forth in the preceding paragraphs, as if fully set forth herein.

123. Defendants designed, manufactured, modified, and used the Stretch Duck 07 in their Tour Guide Business.

124. As DUKW boat designers, manufacturers, modifiers and users, Defendants were aware of the long history of deaths and injuries associated with modified DUKW boats.

125. Defendant owed to the general public, including William and Janice Bright, the duty to exercise ordinary and reasonable care to design, manufacture, modify, inspect, test, use and operate DUKW boats, so as not to subject occupants of the vessel to an unreasonable risk of harm during a foreseeable event.

126. Defendants failed to use ordinary care in the manufacture, design, modification and use of the Subject Stretch Duck 07 to be reasonably safe.

127. Defendants failed to use ordinary care in adequately warning of the risk of the Subject Stretch Boat 07 to take on water and sink in reasonably foreseeable inclement weather conditions.

128. Defendants failed to use ordinary care in adequately warning passengers in the proper use of personal flotation devices.

129. Defendants failed to use ordinary care in adequately warning passengers on proper egress procedures in the event that the boat was sinking.

130. Defendants failed to use ordinary care in adequately warning passengers that the roof and/or overhead canopy could act as a trap as passengers tried to egress.

131. Defendants failed to use ordinary care in adequately warning passengers that the window shades/coverings must be removed or it would trap passengers within the vessel and prevent them from escaping.

132. Defendants breached their duty of care and failed to use ordinary care by the foregoing and by one or more of the following negligent and reckless acts or omissions:

- a. Allowing the water portion of the tour to proceed, despite clear knowledge that a violent thunderstorm was imminent;
- b. By failing to abort the water portion of the tour once it was started and after Defendants learned of the imminent thunderstorm;
- c. By failing to properly monitor weather conditions that day;
- d. By failing to remove the canopy as directed by the NTSB 16 years prior to this event;
- e. By failing to properly equip the Subject Stretch Duck 07 with weather monitoring/notification systems;
- f. By failing to properly alert the operator of the Subject Stretch Duck 07 of the imminent storm and by failing to order him to abort the tour;
- g. By failing to provide adequate reserve buoyancy, so that the Subject Stretch Duck 07 would stay afloat, even in the event of flooding;

- h. By operating the Subject Stretch Duck when water could enter the engine through the exhaust and/or the engine hood/vent, causing the engine to stall;
- i. By not having an adequate and independently powered bilge pump system that was capable of removing water in the event that the engine stalled;
- j. By not properly alerting passengers to the proper use of Personal Flotation Devices;
- k. By not reasonably and adequately testing the Subject Stretch Duck 07;
- l. Defendants knowingly continued to operate modified DUKW boats, despite clear knowledge that the vessels lacked adequate reserve buoyancy to stay afloat in the event that it took on water;
- m. Defendants knowingly continued to operate modified DUKW boats, despite clear knowledge that the roof and/or canopy acted as a trap which keeps passengers from escaping the vessel.

133. As a direct and proximate result of Defendants' negligent acts and omissions, William and Janice Bright sustained severe, permanent, and progressive personal injuries, resulting in their deaths.

134. Pursuant to R.S.Mo. § 537.090, Plaintiffs suffered the following damages:
- a. pecuniary losses suffered by reason of William and Janice Bright's deaths;
 - b. funeral expenses;
 - c. the reasonable value of services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support; and

- d. the damages that William and Janice Bright, decedents, suffered between the time of their injuries and the time they died, for which Decedents would have maintained an action had they survived.

135. Prior to the event, Defendants knew that Stretch Duck 07 lacked sufficient reserve buoyancy, so that in the event that the vessel took on water, it was likely to sink.

136. Prior to the event, Defendants knew that Stretch Duck 07's roof and/or overhead canopy could trap and drown passengers.

137. Prior to the event, Defendants knew that there was a rapidly approaching, severe thunderstorm.

138. Prior to the event, Defendants knew that the U.S. Coast Guard's Certification on Stretch Duck 07 prevented the vessel from entering the waters under such conditions or even if such conditions were predicted to occur during the trip.

139. Prior to the event, Defendants knew that, in certain weather conditions, water could enter the exhaust and/or the engine hood/vent, causing the engine to stall out.

140. Prior to the event, Defendants knew that if the engine stalled out, then the main bilge pump would cease operation and the boat was likely to sink.

141. Prior to the event, Defendants knew that there was a lack of proper egress locations for passenger in the event of an emergency due to aisle width, distance between the seats, cramped quarters, window height, window coverings, and overhead roof.

142. Prior to the event Defendants knew of the defective and dangerous nature of DUKW boats and was on notice of persons seriously injured or killed in a similar manner as the subject incident.

143. Defendants knew or should have known of the defective and dangerous conditions of the Subject Stretch Duck 07 and such conditions would severely injure or kill users. Defendants' conduct showed complete indifference to or conscious disregard for the safety of others, including decedents William and Janice Bright, justifying the imposition of punitive damages in an amount to punish Defendants and to deter it and others from like conduct.

WHEREFORE, Plaintiffs request for this Court to enter a judgment against Defendants for a reasonable sum of money for damages in excess of \$25,000.00 that will fairly and justly compensate for the damages suffered, for punitive damages, costs, interests, fees, attorney's fees, and any other relief that the Court may deem proper.

COUNT III
NEGLIGENT HIRING, RETENTION, SUPERVISION AND TRAINING –
WRONGFUL DEATH
(Defendants RTDI and Ripley Entertainment)

144. Plaintiffs hereby incorporate by reference the allegations of the foregoing paragraphs as though fully set forth herein.

145. Defendants RTDI and Ripley Entertainment owed passengers , including William and Janice Bright, a duty to investigate, supervise, train and monitor Kenneth McKee and Robert Williams' ability, fitness, and qualifications to properly operate the Subject Stretch Duck 07.

146. Defendants breached their duty of care and were thereby negligent in several respects, including but not limited to the following:

- a. Failing to determine that Kenneth Mckee and Robert Williams lacked the requisite ability, fitness and qualifications to safely operate the Subject Stretch Duck 07 at the time of first contracting with Kenneth McKee and Robert Williams;

- b. Failing to determine that Kenneth McKee and Robert Williams lacked the requisite ability, fitness and qualifications to safely operate the Subject Stretch Duck 07 between the time of first contracting and the time of the subject incident;
- c. Failing to determine that Kenneth McKee and Robert Williams lacked sufficient equipment, processes, and systems to safely, effectively, and accurately operate the Subject Stretch Boat 07;
- d. Allowing Kenneth McKee and Robert Williams to operate the Subject Stretch Duck 07 at a time when they knew or should have known that Kenneth McKee and Robert Williams lacked the requisite ability, fitness, and qualifications to safely, effectively, and accurately operate the Subject Stretch Duck 07;
- e. Allowing Kenneth McKee and Robert Williams to disembark on the tour in question, despite clear warning that a severe thunderstorm was imminent;
- f. By failing to properly train Kenneth McKee and Robert Williams on the operation of the Subject Stretch Duck 07 in inclement weather;
- g. By failing to properly train Kenneth McKee and Robert Williams and the protocols for instructing passengers on Personal Flotation Device use and egress procedures in the event of an emergency;
- h. By failing to properly train Kenneth McKee and Robert Williams to monitor weather conditions prior to disembarking on a water tour;
- i. By failing to train Kenneth McKee and Robert Williams on the U.S. Coast Guard restrictions for the use of the Subject Stretch Duck 07 in inclement weather or when inclement weather is imminent.

147. As a direct and proximate result of Defendants' negligent acts and omissions, William and Janice Bright sustained severe, permanent, and progressive personal injuries, resulting in their deaths.

148. Pursuant to R.S.Mo. § 537.090, Plaintiffs suffered the following damages:

- a. pecuniary losses suffered by reason of William and Janice Bright's deaths;
- b. funeral expenses;
- c. the reasonable value of services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support; and
- d. the damages that William and Janice Bright, decedents, suffered between the time of their injuries and the time they died, for which Decedents would have maintained an action had they survived.

149. Defendants knew or should have known of the defective and dangerous conditions of the Subject Stretch Duck 07 and such conditions would severely injure or kill users. Defendants' conduct showed complete indifference to or conscious disregard for the safety of others, including decedents William and Janice Bright, justifying the imposition of punitive damages in an amount to punish Defendants and to deter it and others from like conduct.

WHEREFORE, Plaintiffs request for this Court to enter a judgment against Defendants for a reasonable sum of money for damages in excess of \$25,000.00 that will fairly and justly compensate for the damages suffered, for punitive damages, costs, interests, fees, attorney's fees, and any other relief that the Court may deem proper.

COUNT IV
NEGLIGENCE AGAINST DEFENDANTS KENNETH MCKEE AND ROBERT
WILLIAMS –
WRONGFUL DEATH-RESPONDEAT SUPERIOR

150. Plaintiffs incorporate by reference each and every preceding paragraph as if fully set forth herein.

151. In operating the Subject Stretch Duck 07, Kenneth McKee and Robert Williams owed others, including William and Janice Bright, a duty of care to operate the Subject Stretch Duck 07 as a careful and prudent driver would under similar circumstances.

152. Defendants Kenneth McKee and Robert Williams breached their duty of care and were negligent in at least the following respects:

- a. By failing to monitor the weather prior to departure;
- b. By disembarking on the water tour, despite clear warning that a severe thunderstorm was imminent;
- c. By failing to abort the water tour once they learned that the severe thunderstorm was imminent;
- d. By failing to keep radio or other contact with their home office during the water tour;
- e. By failing to properly instruct passengers on the proper use of Personal Flotation Devices;
- f. By failing to properly instruct passengers on the methods of egress in an emergency situation;
- g. By failing to alert passengers that the overhead roof and/or canopy could trap them in the event of an emergency evacuation;
- h. By failing to alert passengers that the side window covers/curtains could trap them in the event of an emergency evacuation;
- i. By failing to properly instruct passengers on the proper method of removing the

- side window covers/curtains in the event of an emergency evacuation;
- j. By failing to hit the emergency lever/button/switch, which would have lowered the side window covers/curtains;
 - k. By failing to timely alert the proper authorities that the vessel was under distress and taking on water;
 - l. By operating the Subject Stretch Duck 07 in a manner that allowed water to enter the exhaust and/or the engine hood/vent, which stalled the engine;
 - m. By failing to close and secure the engine vent/hood in the event of inclement weather;
 - n. By failing to instruct passengers to abandon ship at the earliest possibility;
 - o. By failing to instruct passengers to retrieve a Personal Flotation Device at the earliest possibility;
 - p. By taking a route around the Branson Belle Steamboat versus a direct route to land.

153. Defendants RTDI and Ripley Entertainment are vicariously liable for the negligent acts and/or omissions committed by Defendants Kenneth McKee and Robert Williams under the doctrine of respondeat superior.

154. As a direct and proximate result of Defendants' negligent acts and omissions, William and Janice Bright sustained severe, permanent, and progressive personal injuries, resulting in their deaths.

155. Pursuant to R.S.Mo. § 537.090, Plaintiffs suffered the following damages:

- a. pecuniary losses suffered by reason of William and Janice Bright's deaths;
- b. funeral expenses;

- c. the reasonable value of services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support; and
- d. the damages that William and Janice Bright, decedents, suffered between the time of their injuries and the time they died, for which Decedents would have maintained an action had they survived.

156. Defendants knew or should have known of the defective and dangerous conditions of the Subject Stretch Duck 07 and such conditions would severely injure or kill users. Defendants' conduct showed complete indifference to or conscious disregard for the safety of others, including decedents William and Janice Bright, justifying the imposition of punitive damages in an amount to punish Defendants and to deter it and others from like conduct.

WHEREFORE, Plaintiffs request for this Court to enter a judgment against Defendants for a reasonable sum of money for damages in excess of \$25,000.00 that will fairly and justly compensate for the damages suffered, for punitive damages, costs, interests, fees, attorney's fees, and any other relief that the Court may deem proper.

Respectfully submitted,

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