STATE OF NEW MEXICO
CHAVES COUNTY
FIFTH JUDICIAL DISTRICT COURT

REBA STROBLE, Individually and as the Personal Representative of the Estate of Jeff Stroble, WARREN ALDRICH, KENNETH BARNCASTLE, MARK BRACKEEN, ROBERT BONHAM, JOSE MUÑOZ, AUSTIN HENSLEY, and BUDDY NUTT,

Plaintiffs,

v.

CASE NO.: D-504-CV-2020-00438

CITY OF ROSWELL and FLYING PHOENIX CORPORATION d/b/a Flying Phoenix Fireworks,

Defendants.

AMENDED COMPLAINT FOR NEGLIGENCE, STRICT LIABILITY, UNAVOIDABLY UNSAFE PRODUCT AND PUNITIVE DAMAGES
and
PETITION FOR THE APPOINTMENT OF A PERSONAL REPRESENTATIVE

COME NOW Plaintiffs Reba Stroble, individually and as the Personal Representative of the Estate of Jeff Stroble, Warren Aldrich, Kenneth Barncastle, Mark Brackeen, Robert Bonham, Jose Muñoz, Austin Hensley, and Buddy Nutt, by and through their attorneys, Hunt Law Firm (Lee Hunt and Aimee Bevan) and McGillivary Steele Elkin LLP (Douglas L. Steele and Megan K. Mechak), and for their Complaint for Negligence, Strict Liability, Unavoidably Unsafe Product, and Punitive Damages and Petition for the Appointment of a Personal Representative, state as follows:

Parties, Jurisdiction and Venue

1. At all times relevant to the allegations in this Complaint, Reba Stroble was married to Jeff Stroble and was a resident of Chaves County, State of New Mexico. Jeff Stroble

was, until his death, a firefighter employed by the Roswell Fire Department. Reba Stroble desires to serve as Wrongful Death Personal Representative for the purposes of pursuing an action under the New Mexico Wrongful Death Act. Pursuant to NMRA 1-017, a "petition to appoint a personal representative may be brought . . . with the wrongful death action itself." As such, Reba Stroble moves this Court for her appointment as Personal Representative, under NMSA 1978, Section 41-2-3, to pursue this wrongful death action relating to the death of Jeff Stroble.

2. Warren Aldrich was at all relevant times a firefighter employed by the Roswell Fire Department.

3. Kenneth Barncastle was at all relevant times a firefighter employed by the Roswell Fire Department.

4. Mark Brackeen was at all relevant times a firefighter employed by the Roswell Fire Department.

5. Robert Bonham was at all relevant times a firefighter employed by the Roswell Fire Department.

6. Jose Muñoz was at all relevant times a firefighter employed by the Roswell Fire Department.

7. Austin Hensley was at all relevant times a firefighter employed by the Roswell Fire Department.

8. Buddy Nutt was at all relevant times a firefighter employed by the Roswell Fire Department.

9. The City of Roswell is an unincorporated municipality located in Chaves County, New Mexico.

10. Flying Phoenix Corporation d/b/a Flying Phoenix Fireworks ("Flying Phoenix") is a Wyoming corporation in the business of importing, distributing and reselling fireworks. Flying Phoenix markets, sells and/or distributes fireworks in New Mexico.

11. Flying Phoenix has established sufficient minimum contacts with New Mexico to subject it to personal jurisdiction in New Mexico, and it is reasonable to do so. The defective product at issue in this case was purchased from Flying Phoenix by the City of Roswell and delivered by Flying Phoenix to the City of Roswell.

12. Jurisdiction and venue are appropriate in Chaves County, New Mexico.

Facts Relevant to All Claims

13. In April 2019, the City of Roswell purchased Class C fireworks (3-, 4-, 5-, and 6-inch shells) from Flying Phoenix for the City of Roswell's annual Fourth of July fireworks show.

14. At the same time in April 2019, the City of Roswell purchased electronic matches ("e-matches") from Flying Phoenix to fuse the fireworks. An e-match is an electric device containing a small amount of pyrotechnic material that ignites when current flows through the device.

15. The e-matches must be manually attached by the customer to the firework shells in order to ignite the fireworks.

16. Prior to 2019, the Roswell Fire Department requested that the City of Roswell hire contractors experienced and trained in fireworks preparation and deployment to manage the fireworks show because the Roswell Fire Department firefighters were not qualified to safely put on this show.

17. The Fire Department made it clear to the City of Roswell that forcing its firefighters to manage a pyrotechnics show was dangerous and put firemen at serious risk of injury.

18. In 2018, the City of Roswell hired a third-party vendor for the annual Fourth of July fireworks show.

19. In 2019, however, the City of Roswell, despite knowing that the Roswell Fire Department was put at unreasonable risk of injury by forcing them to handle the fireworks show and that the Fire Department had specifically requested not to be responsible for the pyrotechnics show, required the Roswell Fire Department to put on the 2019 Fourth of July fireworks show.

20. Firefighters employed by the Roswell Fire Department were tasked by the City of Roswell with all aspects of the fireworks production, including preparing the fireworks for the show, loading the e-matches onto the fireworks, attaching the e-matches to the devices that ignite the fireworks and, ultimately, supervising and running the fireworks show. All of this was done during on-duty hours.

21. On June 5, 2019, at approximately 9:00 a.m., Jeff Stroble, Warren Aldrich, Kenneth Barncastle, Mark Brackeen, Robert Bonham, Jose Muñoz, Austin Hensley and Buddy Nutt, along with several other individuals, began transferring cases of fireworks from a storage unit to a City-owned building for sorting and fusing the firework shells with the e-matches.

22. The firefighters were attaching e-matches to the last case of fireworks when an e-match spontaneously ignited and exploded the firework shell to which it was attached or was being attached, which subsequently ignited the fireworks inside the building. A massive explosion occurred, causing the building's roof to collapse and the entire building to burn.

23. All of the firefighters sustained injuries in the explosion and subsequent fire, including but not limited to burns and hearing loss. Jeff Stroble and Robert Bonham were flown to a regional burn center for treatment of the serious injuries they sustained, while the others were treated in Roswell.

24. On July 21, 2019, Jeff Stroble died from his injuries while at the regional burn center.

Count I
Claims Against City of Roswell

25. Plaintiffs incorporate all previous allegations as if fully set forth herein.

26. The City of Roswell, in requiring the firefighters to assemble the fireworks and put on the fireworks show, despite knowledge that they did not want to participate because of concerns of serious injury if required to do so, engaged in an intentional act, without just cause or excuse, that was reasonably expected to result in the injuries suffered by the firefighters.

27. While workers' compensation is typically the exclusive remedy for an employee injured on the job, an employer loses the rights afforded by the Workers' Compensation Act when: (1) the employer engages in an intentional act or omission, without just cause or excuse, that is reasonably expected to result in the injury suffered by the worker; (2) the employer expects the injury to occur, or has utterly disregarded the consequences of the intentional act or omission; and (3) the intentional act or omission proximately causes the worker's injury. *See Delgado v. Phelps Dodge Chino, Inc.*, 2001-NMSC-034.

28. The City of Roswell expected the injuries to occur, or utterly disregarded the consequences of requiring firefighters to prepare and put on the fireworks show despite knowledge of the lack of qualifications of the firefighters to do so and the objections of the firefighters who sought to have qualified pyrotechnics experts operate the fireworks show.

29. The City of Roswell's intentional act of requiring firefighters to prepare and put on the fireworks show, despite knowledge of the lack of qualifications of the firefighters to do so and the concerns of the firefighters of serious injury, proximately caused the firefighters' injuries.

30. The City of Roswell had a duty to exercise ordinary care for the safety of other persons, including firefighters employed by the Roswell Fire Department.

31. The City of Roswell breached this duty when it required the firefighters to prepare and put on the fireworks show, despite knowledge of the lack of qualifications of the firefighters to do so and the likelihood of serious injury to the firefighters.

32. Section 41-4-6 of the New Mexico Tort Claims Act waives immunity "for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any building, public park, machinery, equipment or furnishings."

33. The firefighters' injuries were caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any building, public park, machinery, equipment or furnishings. The explosion occurred on City of Roswell property in a City of Roswell building.

34. Plaintiffs timely provided notice of their tort claims to the City of Roswell on August 28, 2019.

35. As a result of the City of Roswell's unlawful acts, Plaintiffs suffered injuries and damages in an amount that will be proven at trial.

Count II
Negligence - Flying Phoenix

36. Plaintiffs incorporate all previous allegations as if fully set forth herein.

37. Flying Phoenix, as a supplier and distributor of fireworks and e-matches, had a duty to use ordinary care to avoid a foreseeable risk of injury caused by a condition of the fireworks and/or e-matches or the manner in which they are used.

38. Flying Phoenix breached this duty when it:

a. Failed to adequately warn the firefighters of the known and foreseeable risk that fireworks/e-matches could spontaneously ignite and injure a user. The injuries to the firefighters could have been avoided by giving adequate warning; and

b. Failed to provide adequate directions/instructions for use of the fireworks/e-matches to avoid the risk of injury caused by spontaneous ignition of the e-matches/fireworks during a foreseeable manner of use. The injuries to the firefighters could have been avoided by the provision of adequate directions/instructions.

39. The firefighters are persons who reasonably would be expected to use the fireworks/e-matches and the firefighters' injuries resulted from a foreseeable use of the fireworks/e-matches.

40. The risk of injury to the firefighters from the fireworks/e-matches was foreseeable to, and would have been avoided by, a reasonably prudent supplier.

41. As a direct result of the breach of the duty described herein, Plaintiffs were injured and suffered damages in an amount to be proven at trial.

Count III
Strict Products Liability - Flying Phoenix

42. Plaintiffs incorporate all previous allegations as if fully set forth herein.

43. Flying Phoenix is in the business of putting fireworks/e-matches on the market.

44. The fireworks/e-matches placed on the market by Flying Phoenix presented an unreasonable risk of injury resulting from a condition of the product or from a manner of its use.

45. The fireworks/e-matches presented an unreasonable risk of injury, in part, because:

a. The fireworks/e-matches could spontaneously ignite;

b. The fireworks/e-matches were put on the market without warning of a risk that could be avoided by giving adequate warning; and

c. The fireworks/e-matches were put on the market without directions for use to avoid a risk of injury caused by a foreseeable manner of use.

46. The firefighters were persons Flying Phoenix could reasonably expect to use fireworks/e-matches and the firefighters' injuries resulted from a foreseeable use of the fireworks/e-matches.

47. As a result of the unreasonably dangerous product supplied by Flying Phoenix, Plaintiffs suffered injuries and damages in an amount to be proven at trial.

Count IV
Unavoidably Unsafe Product - Flying Phoenix

48. Plaintiffs incorporate all previous allegations as if fully set forth herein.

49. Fireworks and e-matches, even when properly prepared and labeled, cannot be made safe for their intended and ordinary use.

50. Because of their natural characteristics, the use of fireworks and e-matches involves substantial risk of injury and some users will necessarily be harmed.

51. Fireworks and e-matches unreasonably expose users to risk of injury.

52. Flying Phoenix knew, or in the use of ordinary care should have known, of the unreasonable risk of injury from use of fireworks and e-matches.

53. As a result of the unreasonable risk of injury from use of fireworks and e-matches, Plaintiffs suffered injuries and damages in an amount to be proven at trial.

Count V
Punitive Damages - Flying Phoenix

54. Plaintiffs incorporate the foregoing allegations as if fully set forth below.

55. The aforesaid actions of Flying Phoenix were willful, reckless, or wanton so as to warrant an additional award of punitive damages as punishment and to deter others from committing like offenses.

PRAYER FOR RELIEF

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

a. An order appointing Reba Stroble as the Personal Representative of the Estate of Jeff Stroble;

b. Trial by jury;

c. Compensatory damages for past and future medical expenses, pain, suffering, emotional distress, and disfigurement to all Plaintiffs, in an amount to be proven at trial;

d. Wrongful death damages on behalf of the Estate of Jeff Stroble, including pain and suffering prior to death, loss of enjoyment of life, lost value of life apart from earning capacity, medical expenses, and damages resulting from the death taking into account the mitigating and aggravating circumstances attending the wrongful act or neglect;

e. Punitive damages to all Plaintiffs;

f. Pre-judgment and post-judgment interest and costs in accord with New Mexico law. *See* NMSA 1978, § 56-8-4(A) & (B); and

g. Such other and further relief as is just and proper under the circumstances.

Respectfully submitted,

By: */s/ Lee R. Hunt*

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