No. 23,648-B

RANDAL P. CRANE	§	IN THE DISTRICT COURT OF
	§	
VS.	§	
	§	LIMESTONE COUNTY, TEXAS
RIVA SPORT, INC., SKI LIMITED ENTERPRISES, INC., CHRISTOPHER BRADLEY AND JAMES BRADLEY	§ § §	87TH JUDICIAL DISTRICT

DEFENDANT RIVA SPORT, INC.'S ANSWERS TO PLAINTIFF'S INTERROGATORIES

TO: Randal P. Crane, Plaintiff herein, by and through his attorneys of record, Randell C. Roberts and Bruce L. Roberts, ROBERTS & ROBERTS, 118 W. Fourth, Tyler, Texas 75701-4000.

In accordance with Rule 168 of the Texas Rules of Civil Procedure, Defendant Riva Sport, Inc. makes the following answers to Interrogatories propounded by Plaintiff.

Respectfully submitted,

FULBRIGHT, WINNIFORD, BICE & MARABLE
A Professional Corporation
Attorneys at Law
P. O. Box 7575
Waco, Texas 76714-7575
(817) 776-6000
(817) 776-8555/Facsimile

BY: John A. Stephens
JOHN A. STEPHENS
State Bar No. 19157500

ATTORNEYS FOR DEFENDANT,
RIVA SPORT, INC.

MFR/PRVLGR NOTIFIED
✓ No Comments made
Comments attached
Excisions/Revisions
✓ Firm has not requested further notice
pm 2/24/97

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing document have been forwarded to all counsel of record in accordance with the Texas Rules of Civil Procedure on this the 7 day of Feb., 1994.

John A. Stephens
JOHN A. STEPHENS

1

The undersigned as representative for Riva Sport, Inc., Defendant herein, submits the following as his Answers made to the Interrogatories heretofore served upon Riva Sport, Inc. by Plaintiff.

RIVA SPORT, INC.

BY: _____
ROBERT JACOBS, President

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

BEFORE ME, the undersigned authority, on this day personally appeared Robert Jacobs as representative for Riva Sport, Inc., Defendant herein, who being duly sworn deposes and says that the following answers set forth and subscribed by him to the Interrogatories served upon Riva Sport, Inc. by Plaintiff herein, are true and correct to the best of his knowledge.

SWORN TO AND SUBSCRIBED before me on this the 3 day of FEBRUARY, 1994.

_____
Notary Public in and for the
State of CALIFORNIA

DEBORAH A. ARMBRUST
Notary's Typed/Printed Name

My commission expires: JAN. 9, 1996

ASE1 DEBORAH A. ARMBRUST
COMM. #942535
NOTARY PUBLIC-CALIFORNIA
SAN DIEGO COUNTY
My Comm. Expires Jan. 9, 1996 ASE1

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ANSWERS TO INTERROGATORIES

1. If you have a personal attorney, other than your attorney of record in this lawsuit, identify the attorney by stating the attorney's full name, address, and telephone number.

   ANSWER: Not applicable.

2. With regard to any insurance policy, including umbrella and excess policies, which might be available to satisfy part or all of any judgment which might be rendered in this lawsuit against you, identify the insurance carrier by stating its full name and the liability limits of its insurance policy.

   ANSWER: Farmers Insurance Exchange, with limits of $1,000,000.00 per occurrence and $1,000,000.00 aggregate.

3. Repeat below all oral statements and admissions made by Plaintiff, which you contend are relevant to any material issue in this lawsuit, including but not limited to all statements made contemporaneously with the accident in question.

   ANSWER: Defendant objects to this interrogatory as being in violation of the attorney work product privilege. However, without waiving that objection, Defendant would state that medical records indicate Plaintiff admitted to treating physicians that he had been drinking beer the day of the accident and was intoxicated at the time the accident occurred. Statements made to physicians also indicate Plaintiff consumed at least twelve beers prior to the accident in question. Defendant would also rely upon any and all statements made by Plaintiff during his deposition which will be taken during the discovery of this case. Defendant may also use any and all statements made by Plaintiff that are contained within his medical records or that have been related to his treating physicians. Finally, Defendant is not aware of what statements may have been made by Plaintiff to witnesses at the scene or co-defendants, and Defendant reserves the right to utilize such oral statements as may be discovered during the development of this litigation.

4. Identify, by stating their full name, address, and telephone number, all persons who investigated any aspect of the accident in question prior to the filing of this lawsuit, including but not limited to persons employed by law enforcement agencies or governmental units as well as persons employed by your liability insurance carrier, adjusting company, or risk management agent.

ANSWER: Defendant objects to this interrogatory to the extent it seeks discovery of investigation done after the point in time in which Defendant was sued. Prior to that time, Defendant is not aware of any investigation. Future discovery in the case may reveal that such investigations did occur and Defendant reserves the right to amend this answer.

5. Identify, by stating their full name, address, and telephone number, all persons who actually witnessed any aspect of the accident in question.

ANSWER:

Randal Crane, Plaintiff, 611 E. Walker, Groesbeck, Texas 76642, (817) 729-5028.

Christopher Bradley, Defendant, Lake Limestone, Groesbeck, Texas 76642, (817) 729-3895.

James Bradley, Defendant, Lake Limestone, Groesbeck, Texas 76642, (817) 729-3895.

6. Identify, by stating their full name, address, and telephone number, all potential parties to this litigation including but not limited to those business entities in the chain of sale of the product in question.

ANSWER: None other than the parties already involved.

7. With regard to each expert witness whose testimony you may offer during direct or cross-examination in the trial of this lawsuit, including yourself:

(a) identify them by stating their full name, address, telephone number, and the subject matter of their testimony;

ANSWER: Robert Jacobs, President, Riva Sport, Inc., 6054 Caminito De La Taza, San Deigo, California 92120, (619) 287-3003. Robert Jacobs is President of Riva Sport, Inc. and may offer expert testimony concerning the design of the product involved in the case as well as the adequacy of the instructions and warnings that accompany the product.

Dr. Herman J. Quinius, III, 3115 Pine Avenue, Suite 202, Waco, Texas 76708, (817) 752-8328.

Dr. James V. Campbell, 3500 Hillcrest, Suite 2A, Waco, Texas 76708, (817) 753-7007.

Dr. Russell Neuhaus, 3705 Medical Parkway, Austin, Texas 78701, (512) 458-2141.

(b) state each and all of the mental impressions, inferences, and opinions held by them, along with the basis for their testimony, including the facts and data known to them which relate to or form the basis of these mental impressions, inferences, and opinions, as well as the substance of their testimony.

ANSWER: Defendant would state that Robert Jacobs is willing to give and probably will be deposed in this action and would refer Plaintiff to his deposition for the details concerning his mental impressions, opinions, and the basis for such.

All of the physicians have been identified as treating physicians for the plaintiff and their mental impressions, opinions, and the basis for those can be found in the medical records previously provided by Plaintiff.

8. Identify, by stating their full name, address, and telephone number, all persons having knowledge of relevant facts (Note: We will object to your calling to testify in the trial of this lawsuit any person who is not listed in your Answer or Supplemental Answer to this particular interrogatory.).

ANSWER:

Robert Jacobs, President, Riva Sport, Inc., 6054 Caminito De La Taza, San Deigo, California 92120, (619) 287-3003.

Randal Crane, Plaintiff, 611 E. Walker, Groesbeck, Texas 76642, (817) 729-5028.

Christopher Bradley, Defendant, Lake Limestone, Groesbeck, Texas 76642, (817) 729-3895.

James Bradley, Defendant, Lake Limestone, Groesbeck, Texas 76642, (817) 729-3895.

Dr. Herman J. Quinius, III, 3115 Pine Avenue, Suite 202, Waco, Texas 76708, (817) 752-8328.

Dr. James V. Campbell, 3500 Hillcrest, Suite 2A, Waco, Texas 76708, (817) 753-7007.

Dr. Russell Neuhaus, 3705 Medical Parkway, Austin, Texas 78701, (512) 458-2141

Brian L. Gibson, Attorney at Law, 108 S. Commerce Street, P.O. Drawer 148, Groesbeck, Texas 76642, (817) 729-3000.

John A. Stephens, Fulbright, Winniford, Bice & Marable, P.O. Box 7575, Waco, Texas 76714-7575, (817) 776-6000.

Bobby Reed, Reed & Reed, P.O. Box 349, Groesbeck, Texas 76642, (817) 729-2720.

R. Bruce Moon, Joe Cleveland, McLean & Sanders, 100 Main Street, Fort Worth, Texas 76102-3090, (817) 338-1700.

Randell C. Roberts, Bruce L. Roberts, Roberts & Roberts, 118 W. Fourth Street, Tyler, Texas 75701, (903) 597-6655.

Johnna Ward, Claims Representative, Farmers Insurance Group, P.O. Box 20245, Waco, Texas 76702-0245, (817) 772-6162, (800) 541-0366.

Victor L. Daprile, President, Ski Limited Enterprises, Inc., 7825 S. Avenue, Youngstown, Ohio 44512, (216) 758-5214.

Jimmy Hirth, 611 E. Walker, Groesbeck, Texas 76642, (817) 729-5028.

Betty Hirth, 611 E. Walker, Groesbeck, Texas 76642, (817) 720-5028.

Ronald Crane, Route 1, Box 54, Jewett, Texas 75846, (903) 626-4789.

Clint Wilson, 205 Jane Street, Groesbeck, Texas 76642, (817) 729-2261.

Kenny Jones, 817 W. State, Groesbeck, Texas 76642, (817) 729-5105.

Stephanie Jones, 817 W. State, Groesbeck, Texas 76642, (817) 729-5105.

Marty Lenoir, 404 W. Navasota, Groesbeck, Texas 76642, (817) 729-2623.

Kent Vogel, 710 E. Walker, Groesbeck, Texas 76642, (817) 729-5285.

Nick Goodman, 1107 Tyler, Thornton, Texas 76687, (817) 385-8424.

Cindy Goodman, 1107 Tyler, Thornton, Texas 76687, (817) 385-8424.

Kim Copeland, 405 Frost Creek, Groesbeck, Texas 76642, (817) 729-3319.

9. Describe in detail how you contend the accident in question occurred. Be sure to include what your contend each party did to cause the accident and what you contend each party did to avoid the accident, as well as what other conditions or activities, if any, you contend caused the accident in question.

ANSWER: At this time, Defendant does not know the details as to how the accident in question occurred and cannot respond to this interrogatory. At this time, due to the medical records, Defendant is aware that Plaintiff was intoxicated at the time of the accident which may have been a cause, although Defendant reserves the right to more fully answer this interrogatory once further discovery has been concluded.

10. For each lawsuit filed or written claim for financial compensation made against you alleging a bodily injury or death occurring during the five (5) years prior to the accident in question or since the accident in question and which allegedly resulted in whole or in part from any water balloon or water balloon sling shot, catapult, or launcher of any model sold by you:

(a) identify the party filing the lawsuit or making the claim and their attorney, if any, by stating their full name, last known address, and telephone number;

(b) describe how, when, and where the bodily injury or death was alleged to have occurred;

(c) identify any lawsuit which was filed by stating the style of the lawsuit, its cause number, and the court in which it was filed; and

(d) state what the final disposition was, if any, of the lawsuit or claim.

ANSWER: Defendant is attempting to compile this information and will amend this answer as soon as possible.

11. Describe in detail any changes you have made or measures you have taken since the accident in question which make similar accidents with Aqua Sling water balloons or sling shots less likely to occur in the future.

ANSWER: None.

12. Identify, by stating their name, address, and telephone number, all professional, trade, industry, and safety associations in which you are a member.

ANSWER: None.

13. Explain in detail why you contend, if at all, that you did not design the water balloon sling shot or water balloon in question.

ANSWER: Defendant objects to this interrogatory to the extent it assumes that the water balloon sling shot or water balloon in question was manufactured by Defendant, as Defendant has not yet had an opportunity to examine the sling shot or water balloon in question and cannot admit to that fact. However, assuming that the water balloon sling shot or water balloon in question was manufactured by Defendant, Defendant would state that it copied the design of the product from two other companies: Winger, Inc. of St. Paul, Minnesota; and Blaster of Tampa, Florida.

14. Explain in detail why you contend, if at all, that you did not manufacture the water balloon sling shot or water balloon in question.

ANSWER: Defendant objects to this interrogatory because it has not yet had an opportunity to examine the water balloon sling shot or water balloon in question to determine whether it manufactured these products or not.

15. Explain in detail why you contend, if at all, that you did not sell the water balloon sling shot or water balloon in question.

ANSWER: Defendant objects to this interrogatory because it has not yet had an opportunity to examine the water balloon sling shot or water balloon in question to determine whether it manufactured these products or not.

16. Explain in detail why you contend, if at all, that the Aqua Sling Water Balloon Sling Shot or Water Balloon in question was substantially changed or altered after it left your possession.

ANSWER: Defendant objects to this interrogatory because it has not yet had an opportunity to examine the water balloon sling shot or water balloon in question to determine whether it manufactured these products or not.

17. With respect to any type of recall, retrofit, or consumer alert campaign ever conducted by you or on your behalf for any model of the water balloons or water balloon sling shots, catapults, or launchers ever sold by you:

(a) state all reasons for the recall, retrofit, or consumer alert campaign;

(b) describe the recall, retrofit, or consumer alert campaign by stating the nature of the campaign, when it occurred, and how it was conducted.

ANSWER: Not applicable.

18. Describe in detail and state the language of any written warnings or written instructions which you contend routinely accompanied models of the Aqua Sling water balloons or sling shots in question when they left your possession between January 1, 1992, and May 31, 1993.

ANSWER: See responses to request for production for actual copies of the written warnings and written instruction which accompanied models of the Aqua Sling.

19. Describe in detail your product safety management program for the Aqua Sling water balloons and sling shots. This description should include how the program is organized or structured, all steps or procedures in the process for identifying, recording, evaluating, and eliminating any potential hazards associated with the forseeable use of the product, as well as the name, title, responsibilities, qualifications, and address of the key personnel participating in the program.

ANSWER: All product safety decisions are made by Riva Sport, Inc.'s president, Robert Jacobs.

Note: I have no details of this problem, and have not been served with a complaint to date. I have given this letter to Farmers Ins. agent.

LAW OFFICES OF
PETER F. WISNER
A LAW CORPORATION
234 EAST COLORADO BOULEVARD
SUITE 620
PASADENA, CALIFORNIA 91101

(818) 440-9350
FAX (818) 792-0481

LFT. MS. MFO
C/SBCY
8-18-94
2:50 PM

August 15, 1994

Riva Sport, Inc.
Post Office Box 600404
San Diego, California 92160

Re: Our Client: Alfred Rocha, Jr.
Date of Accident: May 15, 1994

Dear Gentleperson:

Please be advised that this office is representing the interests of the above-named client in pursuing claims for personal injuries and damages sustained in the above-referenced accident involving an Aqua Sling Water Baloon Sling Shot manufactured and distributed by your company.

I would appreciate it if you would contact this office immediately upon receipt of this letter with your insurance information so that we may deal directly with them. My client has suffered from a serious, permanent disability from this accident.

We will calendar our file for FIVE DAYS to give you or your insurance carrier sufficient time to contact this office.

Thank you in advance for your cooperation in this matter, and I will look forward to hearing from you.

Very truly yours,

PETER F. WISNER

PFW/jmt
Enclosure

10

The Law Firm of
William Muhr
&
Associates
Plaza of the Rockies
111 S. Tejon, Seventh Floor
Colorado Springs, Colorado 80903-2295
(719) 473-7079

WILLIAM W. MUHR
President
Colorado Springs Office
Also Licensed in Pennsylvania

Pueblo Office: (719) 542-1263
or (719) 543-2900
Telecopier: (719) 473-7607
1-800-934-4529

August 4, 1993

Product Litigation
Riva Sport, Inc.
P.O. Box 600404
San Diego, CA 92160

Klingensmith is 18 year old who was injured by a potato launched by water balloon sling shot. No service of complaint to date.

Re:	**Our Client:**	**Chet Klingensmith**
	Date of Loss:	**October 1, 1992**
	Product:	**Aqua Sling™ Water Balloon Sling Shot Competition Model 200-Yard Range**

To Whom It May Concern:

Please be advised that this law firm has been retained by Chet Klingensmith to represent him for injuries he sustained as the result of his use of the Aqua Sling™ Water Balloon Sling Shot on October 1, 1992.

As the manufacturer of the above-described item, we are hereby notifying you of our representation of the claims of the above named.

We would appreciate it if you would notify your liability carrier of the accident immediately, if you have not already done so. Please have a representative of your insurance carrier contact us as soon as possible within thirty (30) days of the date of this letter. This will alleviate the need for us to contact you further.

We are enclosing an extra copy of this letter for your convenience so you may forward it immediately to your insurance carrier. We look forward to your early response to this letter.

Very truly yours,

William W. Muhr

WILLIAM W. MUHR

WWM/vmj
cf: Mr. Chet Klingensmith

Larimer County Case No. 94 CV 565

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COPY

CAUSE NO. 92-412

ALEX AZAR	§	IN THE DISTRICT COURT OF
	§	
VS.	§	RUSK COUNTY, TEXAS
	§	
RIVA SPORT, INC., ET AL	§	4TH JUDICIAL DISTRICT

SETTLEMENT AGREEMENT AND FULL AND FINAL RELEASE

THE STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF GREGG	§	

The parties to this Settlement Agreement and Full and Final Release are Alex Azar ("Plaintiff") being represented by Dan Stroup ("Plaintiff's counsel"), and Riva Sport, Inc. ("Defendant"), being represented by Merriman, Patterson & Allison. The parties have agreed to compromise and settle all matters in dispute between them as follows:

For and in consideration of the total payment of $10.00 the receipt and sufficiency of which is hereby acknowledged, and for other good and valuable consideration, the receipt and sufficiency of which is also hereby acknowledged, Plaintiff and Plaintiff's counsel, do hereby fully release and forever discharge Defendant and each of the Defendant's agents, servants, employees, attorneys, representatives, insurance carriers, shareholders, officers, directors, parents, subsidiaries, successors and affiliated entities of whatever kind (hereinafter collectively referred to as "the Releasees"), of and from any and all claims and causes of action which Plaintiffs now has or may have, whether known or unknown, that are based on any events that have occurred prior to the date of this Release.

This release is a general release, and specifically includes but is not limited to all claims and causes of action which Plaintiff now has or may have in the future arising from or in any way growing out of or connected with the facts, allegations and claims stated in Plaintiff's pleadings in Cause No. 92-412, currently pending in the District Court of Rusk County, Texas, and styled Alex Azar v. Riva Sport, Inc., et al (the "Litigation"), or which could have been stated in the Litigation.

This Release further specifically includes but is not limited to all claims for damages that allegedly have resulted or could result from the incident that occurred on or about August 14, 1992 at the Martin Creek Reservoir in Rusk County, Texas, such as claims for damages for known or unknown personal injuries, loss of earnings, medical, doctors', nurses' and hospital expenses, grief, sorrow, mental anguish, loss of consortium, companionship, society or household services, punitive damages, attorneys fees, pre- and post-judgment interest, and any and all other loss or detriment which arose from, or could arise from the accident.

To the extent, if any, Plaintiff has any other claims arising out of the incident or incidents made the basis of the Litigation and not released by this Release, whether against the Releasees or anyone else, Plaintiff assigns those claims to Defendant.

Plaintiff expressly warrants that he has not assigned to anyone else the claims Plaintiff has or may have arising out of the incident made the basis of the Litigation, and Plaintiff agrees to indemnify and hold harmless the Releasees from any and all claims arising out of or derivative of the claims released in the Release, including all

claims for contribution or indemnity, and expressly including any claims arising out of the Releasees' own negligence or fault.

Plaintiff expressly warrants and agrees that he has paid or will pay all medical, hospital and custodial expenses incurred and to be incurred as a result of the incident made the basis of this Litigation; and Plaintiff will hold the Releasees harmless from any and all such claims and liens based on any such medical, hospital and/or custodial expenses.

For the aforesaid consideration, Plaintiff agrees to dismiss the Litigation with prejudice to refiling by submitting a Motion to Dismiss and Order of Dismissal to be approved and entered by the Court, with costs of court taxed against the Defendant, Riva Sport, Inc. and Plaintiff shall be responsible for payment of the remaining costs and fees, including Plaintiff's own attorneys fees.

Plaintiff understands and acknowledges that this settlement is a compromise of a doubtful and disputed claim, and that the payment described above is not to be construed as an admission of liability on the part of the Releasees. Plaintiff understands and acknowledges that the Defendant specifically denies responsibility for any damages that Plaintiff has alleged. Each of the parties hereto denies any liability in connection with any claim and intends hereby solely to avoid litigation and buy its peace. By this settlement agreement, no admission of any wrongful action or inaction on the part of any parties hereto is expressly or impliedly admitted.

Each party is aware that it may hereafter discover claims or facts in addition to or different from those it now knows or believes to be true with respect to the

matters related herein. Nevertheless, it is the intention of the parties to fully, finally and forever settle and release all such matters, and all claims relative thereto, which do not exist, may exist, or heretofore have existed between them. In furtherance of such intention, the releases given herein shall be and remain in effect as full and complete mutual releases of all such matters notwithstanding the discovery or existence of any additional or different claims or fact relative thereto.

The parties shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this agreement.

This Settlement Agreement and Full and Final Release contains the entire agreement between the Plaintiff and Defendant, and the terms of this Settlement Agreement and Full and Final Release are contractual and not a mere recital.

In making this agreement of compromise and settlement, Plaintiff has not relied upon any statement or representation pertaining to this matter made by the Releasees or persons representing them, or by any person or persons employed by them.

Plaintiff agrees to keep the terms of this settlement in absolute confidence, and will not disclose or communicate the fact of settlement or the amount paid in settlement to any person or entity at any time.

This agreement shall not be construed against the party or its representative who drafted it or any portion of it. No partial invalidity of this agreement shall effect the remainder, which remainder shall continue with full force and effect, the invalid portion being severed from the agreement.

Plaintiff expressly warrants and represents that he has carefully read the foregoing Release and knows the contents thereof and signs it as his own free act.

IN WITNESS WHEREOF, Plaintiff has caused this SETTLEMENT AGREEMENT AND FULL AND FINAL RELEASE to be executed this 2 day of August, 1993.

ALEX AZAR

AGREED TO AND APPROVED:

ERSKINE, MCMAHON & STROUP, L.L.P.

By: _____
DAN STROUP
Attorney for Plaintiff

VERIFICATION

THE STATE OF TEXAS §
§
COUNTY OF GREGG §

BEFORE ME, the undersigned authority, on this day personally appeared **ALEX AZAR,** known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 2 day of August, 1993.

Lisa Smith
NOTARY PUBLIC, STATE OF TEXAS

My Commission Expires:
4/22/95

CLERK OF THE COURT
LORENE GROSS
Name
RUSK COUNTY COURT HOUSE
Address
HENDERSON TX 75652

ATTORNEY FOR PLAINTIFF OR PLAINTIFF
DAN STROUP
Name
P.O. BOX 3485
Address
LONGVIEW, TX 75606

THE STATE OF TEXAS

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

To RIVA SPORT, INC., P.O. BOX 600404 SAN DIEGO, CA 92160 BY SERVING THE SECRETARY OF STATE OF TEXAS, CAPITOL STATION, AUSTIN, TEXAS Defendant, Greeting:

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable District Court Fourth Judicial District of Rusk County, Texas at the Court House of said County in HENDERSON, Texas.

Said Plaintiff's Petition was filed in said court on the 22 day of SEPTEMBER A.D. 19 92, in this case, numbered 92-412 on the docket of said court, and styled,

ALEX AZAR Plaintiff.

VS. RIVA SPORT, INC., ET AL Defendant.

The nature of Plaintiff's demand is fully shown by a true and correct copy of Plaintiff's Original Petition accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand seal of said Court at Henderson, Texas this the 22 day of SEPTEMBER A.D. 19 92.

1992 OCT -2 AM 10:18

(SEAL)

DAN T. RICHARDS
Sheriff of Travis County, Texas
DELIVERED THIS DATE
OCT 05 1992
By James L. Liles Deputy

~~LORENE GROSS~~ Clerk, District Court,

~~RUSK~~ County, Texas.

By Joan Van Zandt, Deputy.

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Rule 106: "–the citation shall be served by the officer delivering to each defendant, in person, a true copy of the citation with the date of delivery endorsed thereon and with a copy of the petition attached thereto."

823740

No. 92-412

ALEX AZAR	§	IN THE DISTRICT COURT OF
	§	
VS.	§	RUSK COUNTY, TEXAS
	§	
RIVA SPORT, INC., ET AL	§	4TH JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE COURT:

1.

This is a products liability damage suit arising out of the serious and permanently disabling injuries suffered by Alex Azar as a result of a defective "Aqua Sling" designed, manufactured, sold, or otherwise placed in the stream of commerce by the defendants. Plaintiff's cause of action is based on strict liability and negligence.

Parties to this suit are:

Plaintiff: Alex Azar, a natural person.

Defendants: 1) Riva Sport, Inc., P. O. Box 600404, San Diego, CA 92160, who does business in this State pursuant to § 17.042 of the Texas Civil Practice and Remedies Code and may be served pursuant to § 17.044 of the Texas Civil Practice and Remedies Code by serving the Secretary of State of the State of Texas, Capitol Station, Austin, Texas, as the defendant is a non-resident who engages in business in this State, but does not maintain a regular place of business in this State or designate an agent for service of process;

2) Mark Robert Fuller d/b/a Gadzooks of Longview, who may be served at 2724 Patio, Longview, Texas 75605.

FILED
In the District Court of
Rusk County, Texas
on this the 22 day of Sept 1992
at 11:15 o'clock a M.
LORENE GROSS, CLERK
By [signature] Deputy

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2.

Venue of this suit is proper and maintainable in Rusk County, Texas pursuant to § 15.001 of the Texas Civil Practice and Remedies Code because the cause of action made the basis of this suit accrued in Rusk County, Texas.

3.

Plaintiff's cause of action arises from an incident which occurred on August 14, 1992 at the Martin Creek Reservoir in Rusk County, Texas. Alex Azar was at the lake for recreational purposes when suddenly and without warning he was struck in the head by a water balloon propelled by the "Aqua Sling", causing injury to the head, eye and bones of the face of Alex Azar. The injury occurred because the "Aqua Sling" is unreasonably dangerous, said "Aqua Sling" being designed, manufactured and sold by the defendants, which allowed the injury to occur with normal and intended use.

4.

Plaintiff alleges the "Aqua Sling", also referred to herein as "the product," was negligently designed, manufactured, sold, or otherwise placed in the stream of commerce by the defendants. Such negligence was a proximate cause of Alex Azar's injuries and resulting damages sustained by plaintiff. Defendant failed to warn Alex Azar, and others similarly situated, of the hazards inherent in the use of its product and failed to instruct the

persons actually using the product at the time of the injury, and others similarly situated, on how to avoid such hazards, all of which constituted negligence and a proximate cause of plaintiff's injuries and damages.

Failure to furnish adequate warnings and instructions also rendered defendants' product defective and unreasonably dangerous which was a producing cause of Alex Azar's injuries. The "Aqua Sling" designed, manufactured, and marketed by defendants, Riva Sport, Inc., and Mark Robert Fuller, d/b/a Gadzooks of Longview, was represented to the consuming public, including Alex Azar, to be safe and free of danger from causing such injuries when properly used. Such representations were relied upon by Alex Azar, and others similarly situated. The representations involved material facts concerning the quality or character of the product and were, of course, false and misleading and a producing cause of Alex Azar's injuries and plaintiff's resulting damages.

6.

Defendants failure to furnish adequate warnings and instructions, while at the same time materially representing the "Aqua Sling" to be safe and danger free, which representations were false and misleading, rendered the "Aqua Sling" defective and unreasonably dangerous which was a producing cause of Alex Azar's injuries. Plaintiff invokes the provisions of §§ 402a

and 402b of the Restatement of Torts and allege that defendants are liable to him pursuant to the provisions as interpreted by the Court of this State as well as for common law negligence.

7.

Plaintiff alleges that the "Aqua Sling" is an inherently dangerous object and defendants, Riva Sport, Inc. and Mark Robert Fuller d/b/a Gadzooks of Longview, owed Alex Azar a nondelegable duty of care to adequately warn Alex Azar, and others similarly situated, about the dangers of the use of the "Aqua Sling" and to warn Alex Azar, and others similarly situated, of the proper and safe use of the "Aqua Sling", to place markings, labels or warnings on the "Aqua Sling" to prevent injuries such as those that occurred to Alex Azar and others from occurring.

8.

When the projectile fired by the "Aqua Sling" struck Alex Azar, he received serious, permanent and disabling injuries to his body and nervous system which have and will require large amounts of medical, hospital and related expenses, past and future; such injuries have caused him to suffer excruciating physical pain and mental anguish in the past and in reasonable probability will cause more of the same in the future. In addition, the serious and permanently disabling injuries have caused Alex Azar to sustain a loss of earnings, and in all

likelihood his ability to work and earn money in the future has been severely impaired, if not totally destroyed. Further, Alex Azar has and will suffer physical impairment and disfigurement as a result of his injuries. In accordance with Texas law, suit is brought against defendants, Riva Sport, Inc. and Mark Robert Fuller d/b/a Gadzooks of Longview, for fair, reasonable and adequate compensation for the damages sustained by plaintiff.

PREMISES CONSIDERED, plaintiff prays for service of citation upon defendants, for judgment for his damages against defendants, for interest at the legal rate, both pre-judgment and post judgment, for costs of suit and such other and further relief to which he is entitled at law and in equity.

Respectfully submitted,

ERSKINE, MCMAHON & STROUP, L.L.P.
P. O. Box 3485
Longview, Texas 75606
(903)757-8435
(903)757-9429

By _____
Dan Stroup
Bar No. 19425200

ATTORNEY FOR PLAINTIFF

JURY DEMAND

Plaintiff respectfully demands his right of trial by jury.

The State of Texas

93-823740

Secretary of State

INCLUDE REFERENCE NUM
IN ALL CORRESPONDENCE

Statutory Filings Division
Statutory Documents
P. O. Box 12887
Austin, Texas 78711-2887
[512] 463-5560

OCTOBER 12, 1992

RIVA SPORT, INC.
P.O. BOX 600404
SAN DIEGO, CA 92160

RE:
AZAR, ALEX VS RIVA SPORT, INC., ET AL in the 4TH JUDICIAL DISTRICT COURT OF RUSK COUNTY, TEXAS. Cause No. 92412

Dear Sir/Macam:

Pursuant to the Laws of Texas, we forward herewith by CERTIFIED MAIL, return receipt requested, a copy of process SERVED UPON the Secretary of State of the State of Texas on OCTOBER 5, 1992.

JH/ST/JA

Enclosure CERTIFIED MAIL 429294613

REFER CORRESPONDENCE TO:

STROUP, DAN
ERSKINE & MCMAHON
P.O. BOX 3485
LONGVIEW, TX 75606

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Yours truly,

Secretary of State

SECRETARY OF STATE
STATUTORY DOCUMENTS SECTION
AUSTIN, TEXAS 78711

Fold at line over top of envelope to the right of the return address

CERTIFIED

P 429 294 613

MAIL

U.S. POSTAGE

RIVA SPORT, INC.
P.O. BOX 600404
SAN DIEGO, CA 92160

Name R
1st Notice 10-15
2nd Notice 10-23
Return 10-30

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SUSAN LUECK, Individually,
and as Next Friend of DENNIS
LUECK, a Minor,

Plaintiffs,

HON. ANNA DIGGS TAYLOR
CASE NO. 92-CV-70261

vs.

RIVA SPORT, INC., a California
Corporation and AQUA SLING, INC.,
a California Corporation, Jointly
and Severally,

Defendants.
_____/

JONATHAN L. WALKER (P27893)
Attorney for Plaintiffs
165 N. Woodward Avenue
Birmingham, MI 48009
(313) 642-5044

VICTOR T. VAN CAMP (P38471)
Attorney for Defendants
44 First Street
Mt. Clemens, MI 48043
(313) 979-6500
_____/

SATISFACTION OF JUDGMENT

Now come the Plaintiffs herein, SUSAN LUECK, Individually, and as Next Friend of DENNIS LUECK, a Minor, by their attorneys, Jonathan L. Walker and Susan Caplan and hereby agree to satisfaction of judgment entered in this matter on February 3, 1993 in the amount of Seventy Five Thousand Dollars ($75,000.00) by way of acceptance of monies levied upon and received from bank accounts held

LAW OFFICES OF
MARTIN, BACON
& MARTIN, P.C.
44 FIRST STREET
P.O. BOX 2301
MOUNT CLEMENS,
MICHIGAN 48043
(313) 979-6500

1528.

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by Defendant, Riva Sport, Inc., in the Bank of America, California, those being savings account number 10537-01200 and checking account number 10538-04947 and the balance of said accounts totaling the amount of Thirty Three Thousand Five Hundred Forty Four Dollars and 16/100 ($33,544.16).

Plaintiffs further hereby acknowledge receipt of the amount of Thirty Three Thousand Five Hundred and Forty Four Dollars and 16/100 ($33,544.16) and that said amount is accepted by Plaintiffs in full satisfaction of the judgment entered by this court on February 3, 1993. Plaintiffs further acknowledge that they will cease and desist any further collection efforts against assets owned or controlled by Defendant, Riva Sport, Inc., in light of the payment of Thirty Three Thousand Five Hundred Forty Four Dollars and 16/100 ($33,544.16) in full satisfaction of the February 3, 1993 judgment.

SUSAN LUECK, Individually, and as Next Friend of DENNIS LUECK, a Minor

JONATHAN L. WALKER (P27893)
Attorney for Plaintiffs

Dated: November 5, 1993

LAW OFFICES OF
MARTIN, BACON
& MARTIN, P.C.
44 FIRST STREET
P.O. BOX 2301
MOUNT CLEMENS,
MICHIGAN 48043

(313) 979-6500

1528.

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United States District Court Eastern District of Michigan	Summons In a Civil Action	Civil Case No: 92-71374 Judge: ANNA DIGGS TAYLOR

Plaintiff name(s) SUSAN LUECK, individually and as Next Friend of DENNIS LUECK, a minor	Defendant name(s) AQUA SLING, INC., a California corporation
Plaintiff's attorney, name and address JONATHAN L. WALKER (P27893) 165 N. Woodward Ave. Birmingham, MI 48009 (313) 642-5044	Name and address of defendant being served: Aqua Sling, Inc. P.O. Box 600404 San Diego, CA 92160 REGISTERED AGENT: John A. Doerst 12694 Montana Ave. Los Angeles CA 90049

To the defendant:
This summons is notification that YOU ARE BEING SUED by the above named plaintiff(s):

1. You are required to serve upon the plaintiff's attorney, name and address above, an answer to the complaint within _____ days after receiving this summons, or take other actions that are permitted by the Federal Rules of Civil Procedure.

2. **You must file with the Clerk of Court, the original and one copy of your answer within the time limits specified above.**

3. Failure to answer or take other action permitted by the Federal Rules of Civil Procedure may result in the issuance of a judgment by default against you for the relief demanded in the complaint.

7/20/92

ATTY SAID HE WOULD DISMISS SUIT IF INSURANCE COMPANY SENT VERIFICATION OF LACK OF INSURANCE

JOHN P. MAYER
Clerk of the Court

By: _____
Deputy Clerk

(seal)

JUN 29 1992
Date

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(Over)