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CASE NUMBER: 15-2-28905-5 SEA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PHUONG DINH,

Plaintiff,

v.

RIDE THE DUCKS INTERNATIONAL, LLC,
a foreign company; RIDE THE DUCKS OF
SEATTLE, LLC, a Washington company;
ERIC BISHOP and JANE DOE BISHOP, and
their marital community;

Defendants.

No.

COMPLAINT FOR PERSONAL
INJURIES, DAMAGES, AND
PUNITIVE RELIEF

Plaintiff alleges:

I. Parties

1.1 Phuong Dinh is an 18 year old single woman residing in Seattle, King County, Washington.

1.2 Ride the Ducks International, LLC ("RTD International") is a limited liability company organized under the laws of the State of Missouri with its principal place of business in the State of Georgia.

COMPLAINT FOR PERSONAL INJURIES,
DAMAGES, AND PUNITIVE RELIEF - 1

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1.3 Ride the Ducks of Seattle, LLC ("RTD Seattle") is a limited liability company organized under the laws of the State of Washington with its principal place of business in King County, Washington. RTD Seattle is a citizen of the State of Washington.

1.4 Eric Bishop was an employee of RTD Seattle acting within the course and scope of his employment with RTD Seattle at the time of the events alleged herein. Mr. Bishop was driving Ride the Duck Boat No. 6, the vehicle involved in the below-described collision. Mr. Bishop is a citizen of the State of Washington domiciled in Snohomish County, Washington. All acts of Mr. Bishop were also done individually and on behalf of his marital community.

II. Jurisdiction and Venue

2.1 The Superior Court of King County, State of Washington, has subject matter jurisdiction over this action pursuant to RCW 2.08.010.

2.2 Jurisdiction is proper in the State of Washington because the alleged causes of action arose out of activities within the State of Washington, including but not limited to the transaction of business within this State, and the commission of a tortious act within this State, because RTD Seattle has its principal place of business in this State, and because Eric Bishop is a resident and citizen of this State. RCW 4.28.185; RCW 4.12.025.

2.3 Venue is proper in and for King County, Washington because RTD Seattle has its principal place of business and transacts business in King County, Washington, and because the acts and omissions alleged herein resulted in personal injury in King County, Washington. RCW 4.12.020-025.

2.4 RTD International was at all relevant times conducting substantial and continuous business in the State of Washington by selling products to entities within this State. The

1 State of Washington has jurisdiction over RTD International for the below-described
2 claims. To the extent RTD International defectively manufactured products in Missouri
3 or Georgia, this Court has the authority and jurisdiction to apply the punitive damages
4 laws of those states to this action.

5 2.5 Mr. Bishop and RTD Seattle are citizens of and domiciled in the State of Washington.
6 Accordingly, this action may not be removed pursuant to 28 U.S. Code § 1441(b)(2).

7 8 **III. Facts**

9 3.1 About 11:11 a.m. local time on Thursday September 24, 2015, a 1945 GMC DUKW No.
10 6 – an amphibious military vehicle modified and remanufactured for tour operations by
11 RTD International, and operated by RTD Seattle - was traveling northbound in the center
12 lane on the SR 99 Aurora Bridge at approximately block no. 2900.00, 1000 feet from
13 Raye Street.

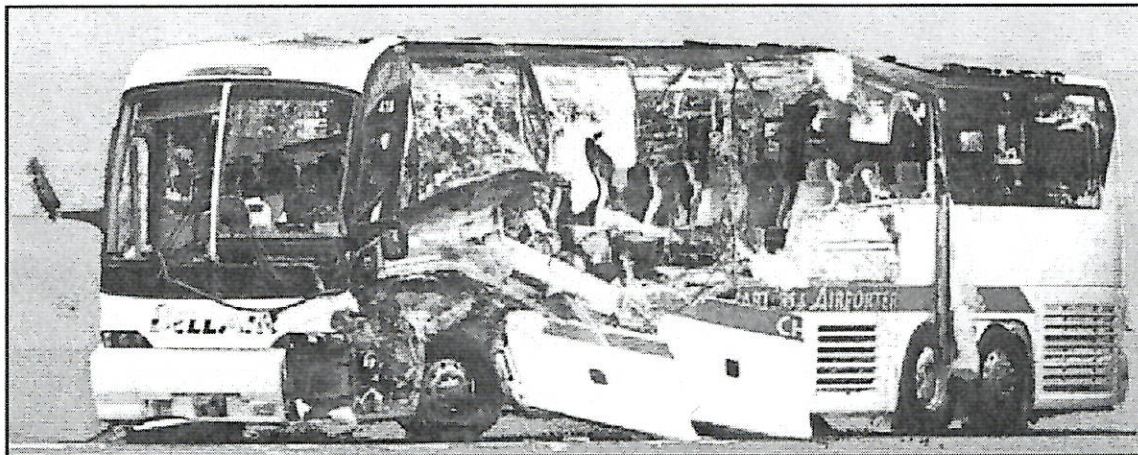
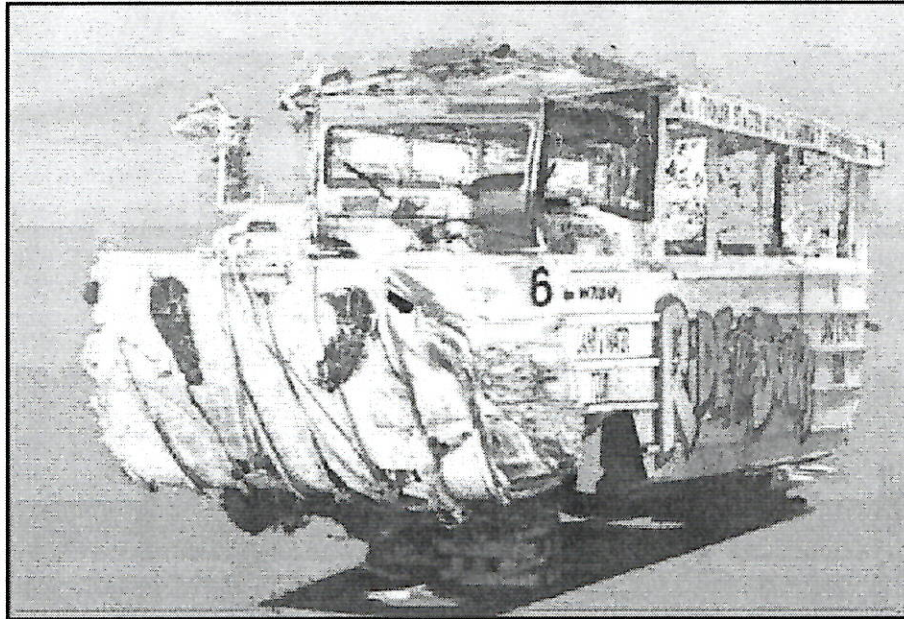
14 3.2 DUKW No. 6 was occupied by Eric Bishop, its 54 year old driver, and 36 passengers.

15 3.3 RDT Seattle created the route driven by Defendant Bishop, despite knowing that the SR
16 99 Aurora Bridge was unsafe to be traveled upon by a DUKW due to the bridge's narrow
17 lane configuration, lack of a center median, and posted speed limit.

18 3.4 At the same time, a 2009 MCI motor coach, operated by CWA Inc. dba Bellair Charters
19 Hesselgrave South, was traveling southbound on the center lane on Washington State
20 Route 99 (SR 99) also known as the Aurora Bridge.

21 3.5 The motor coach was occupied by a 68 year old driver and approximately 45 to 50
22 passengers.
23

1 3.8 The National Transportation Safety Board documented the damage to the crash scene, the
2 DUKW vehicle and motor coach using three-dimensional laser scanning technology. The
3 following figures show the 3D scans of the left front side of the DUKW and left side of
4 the motor coach:



1 3.9 RTD International manufactured, refurbished and modified DUKW No. 6 which was
2 originally a 1945 military model. In approximately 2005, RTD International sold the
3 DUKW to RTD Seattle.

4 3.10 On or before October 2013, RTD International determined that the axle housings in their
5 manufactured, refurbished, and modified DUKWs were dangerously defective.

6 3.11 On or about October 2013, RTD International issued a notice to purchasers of
7 approximately 57 of its refurbished, manufactured and modified DUKW vehicles. The
8 notice alerted the purchasers to dangerous defects in the axle housing. The notice
9 provided guidance on a modification to strengthen the axle housing to prevent fractures.

10 3.12 RTD International took no further action to ensure that purchasers of its manufactured,
11 refurbished, and modified DUKW products had in fact remedied the dangerous defects.

12 3.13 RTD International did not issue a recall of its defective and dangerous DUKW products.

13 3.14 According to the NTSB: The left front axle that failed on the accident vehicle had an
14 earlier modification to the axle housing that had been recommended by RTD
15 International but did not have an associated service bulletin.

16 3.15 The "earlier modification" to the axle housing was not the same recommendation
17 outlined in the October 2013 service bulletin as a recommended fix for the DUKW.

18 3.16 According to The Seattle Times story of September 29, 2015, RTD Seattle mechanic
19 Dominick Anderson stated he had never seen the October 13, 2013 service bulletin.

20 3.17 RTD International issued a statement after the collision stating that it warned purchasers
21 about potential failure of the front axle housing assembly on 57 vehicles in service
22 throughout the country, and that it recommended specific inspections and repairs to
23 reinforce the housing.

1 3.18 The NTBS has possession of the DUKW vehicle and its component parts. It is currently
2 performing metallurgical examination of the axle components, review of the motor coach
3 company's onboard video systems, and other investigatory acts.

4 3.19 Following the Crash, the Washington Utilities and Transportation Commission suspended
5 RTD Seattle's operations pending a full examination into its fleet. The state's
6 investigation team is still analyzing maintenance records and conducting physical
7 inspections of the DUKW vehicles.

8 3.20 RTD Seattle has implored the State to act with "urgency" so that the vehicles can be
9 placed back in service and the company's 130 employees sent back to work.

10 3.21 RTD Seattle has informed the State that it will no longer use the SR 99 Aurora Bridge.

11 3.22 RTD Seattle has informed the State that it will now use a separate driver and tour guide
12 instead of combining the two functions in one employee.

13 3.23 As a result of the collision, approximately 64 people were injured, five of whom were
14 killed.



24 COMPLAINT FOR PERSONAL INJURIES,
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1 3.24 A total of 45 to 50 students and staff from North Seattle College were on the motor coach
2 when it was struck. The College had organized an excursion for students in its
3 international program.

4 3.25 Phuong Dinh, a new entering freshman, was seated in the window seat, on the left side
5 just forward of the middle of the motor coach.

6 3.26 Phuong suffered numerous orthopedic injuries, complex facial lacerations and other
7 injuries. She was transported to Harborview.



15 3.27 As of the date of this complaint, Phuong is still recovering at Keiro Nursing Home in
16 Seattle.

17 **IV. Liability**

18 4.1 RTD International is a product manufacturer and product seller within the meaning of
19 RCW 7.72 *et seq.*

20 4.2 RTD International manufactured or remanufactured DUKW No. 6, the relevant product,
21 which was not reasonably safe in construction. When the product left control of RTD
22 International, it deviated in a material way from the design specifications or performance
23 standards of the manufacturer, or deviated in a material way from otherwise identical

1 units of the same product line. To wit, DUKW No. 6 had dangerous defects in the axle
2 housing, resulting in fractures and other hazardous defects, that deviated from
3 specifications, standards, and other products manufactured or remanufactured by RTD
4 International.

5 4.3 RTD International is strictly liable for all damages proximately caused by the fact that
6 DUKW No. 6 was not reasonably safe in construction. RCW 7.72.030.

7 4.4 RTD International is liable for Plaintiff's damages because DUKW No. 6 was not
8 reasonably safe as designed. At the time of manufacture or remanufacture, the likelihood
9 that the product would cause the Plaintiff's harm or similar harms, and the seriousness of
10 those harms, outweighed the burden on RTD International to design a product that would
11 have prevented those harms and the adverse effect that an alternative design that was
12 practical and feasible would have on the usefulness of the product. RCW 7.72.030.

13 4.5 RTD International is liable for Plaintiff's damages because DUKW No. 6 was not
14 reasonably safe because adequate warnings of instructions were not provided to RTD
15 Seattle regarding maintenance and repair of DUKW No. 6, and the likelihood that the
16 product would cause Plaintiff's harm or similar harms, and the seriousness of those
17 harms, rendered the warnings or instructions of the manufacturer inadequate, and RTD
18 International could have provided the warnings or instructions which would have been
19 adequate.

20 4.6 RTD International, as the product seller of DUKW No. 6, is liable for negligence,
21 including but not limited to the failure to maintain or ensure the maintenance and proper
22 repair of DUKW No. 6, and the failure to properly and adequately notify RTD Seattle of
23 the dangerous defects in DUKW No. 6 that caused the above-described crash and

injuries, of which RTD International was aware or reasonably should have been aware.

4.7 Eric Bishop was negligent, including but not limited to: a) operating a motor vehicle below the standard of reasonable care required for the operation of a motor vehicle on the public roads of Washington; b) acting as a tour guide while also operating a vehicle; c) failing to maintain proper control of the DUKW No. 6; d) failing to stay in his lane of travel; e) traveling upon a bridge known to have inadequate lane width to accommodate a DUKW safely; f) traveling upon a bridge known to be unsafe due to lack of a center median; g) traveling at an unsafe rate of speed given the physical dimensions, capacities, and characteristics of a DUKW and the SR 99 Aurora Bridge; and h) crossing the center line of the SR 99 Aurora Bridge.

4.8 RTD Seattle is vicariously liable for the negligent acts and omissions of Eric Bishop under the doctrine of *respondeat superior*.

4.9 RTD Seattle was negligent in many respects, including but not limited to: a) failing to properly inspect, maintain, and repair DUKW No. 6; b) failing to use reasonable care to detect hazardous defects in DUKW No. 6; c) failing to use reasonable care to warn and remedy those defects; d) failing to address the 2013 notice issued by RTD International; e) operating an unsafe, dangerous and defective vehicle on a state roadway; f) requiring its drivers to have the dual function of both operating a vehicle and entertaining its passengers; g) creating a travel route that included utilization of SR 99 Aurora bridge despite having actual or constructive knowledge that the bridge had an inadequate lane width to accommodate a DUKW safely as well as no center median; h) failing to properly train and supervise its mechanics and drivers; and i) endangering the public safety by operating a modified WWII vehicle at highway speeds that were excessive given the

1 physical dimensions, capacities, and characteristics of a DUKW and the SR 99 Aurora
2 Bridge.

3 **V. Damages**

4 5.1 As a direct and proximate result of the above acts, omissions, and other conduct of
5 Defendants, Phuong Dinh has suffered and continues to suffer permanent physical
6 injuries, disability, disfigurement, pain and suffering, emotional trauma, loss of
7 enjoyment of life, and other general damages in an amount to be proven at the time of
8 trial.

9 5.2 As a direct and proximate result of the above acts, omissions, and other conduct of
10 Defendants, Phuong Dinh has been required to seek various medical treatments and will
11 continue to require medical treatments in the future, as well as other special damages
12 including delay of education, increased educational expenses, wage loss, caregiver
13 expenses, including but not limited to her parents' need to leave the family's two minor
14 children and business in order to care for Phuong, increased housing expenses, all in an
15 amount to be proven at the time of trial.

16 5.3 Although Washington has the most significant relationship to the conduct underlying the
17 negligence and products liability claims, RTD International committed conduct in its
18 state of citizenship, Missouri, that was outrageous because of RTD International's
19 reckless indifference to the rights of others, including the plaintiff in this case, and
20 Missouri possesses the interest in punishing and deterring such conduct. Accordingly,
21 RTD International is liable for punitive damages under Missouri law. *Singh v. Edwards*
22 *Lifesciences Corp.*, 151 Wn. App. 137, 210 P.3d 337 (2009).
23

1 5.4 In addition or in the alternative, RTD International committed acts of willful misconduct
2 or wantonness in its other state of citizenship, Georgia, and Georgia possesses the interest
3 in punishing and deterring such conduct. Accordingly, RTD International is liable for
4 punitive damages under Georgia law. *Singh v. Edwards Lifesciences Corp.*, 151 Wn.
5 App. 137, 210 P.3d 337 (2009).

6 5.5 Plaintiff has incurred other damages to be proven at the time of trial.

7 **VI. Prayer for Relief**

8 WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally as follows:

- 9 1. For special and general damages in amounts to be proven at trial;
10 2. For punitive damages under Missouri and/or Georgia law;
11 3. For costs and disbursements;
12 4. For statutory attorney fees;
13 5. If Defendant brings any frivolous or unfounded defenses, for attorneys' fees and costs
14 pursuant to RCW 4.84.185 and/or Rule 11 of the Superior Court Civil Rules;
15 6. For statutory interest on the judgment from the date judgment is entered until paid in full;
16 7. For prejudgment interest on the special damages;
17 8. For prejudgment interest on liquidated damages;
18 9. For such other and further relief as the Court may deem just and equitable.

19 DATED this 2nd day of December, 2015.

20
21 /s/ Karen K. Koehler

22 Karen K. Koehler, WSBA#15325
23 Andrew N. Ackley, WSBA#41752
24 Counsel for Plaintiff