

EXHIBIT D

FILED
IN THE COURT OF COMMON PLEAS
2010 DEC 23 CUYAHOGA COUNTY, OHIO

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

KIMBERLY JOHNSON; as Executrix
of the Estate of DOUGLAS
JOHNSON, deceased
205 Kenlane Street
Greensburg, PA 15601

and

DAVID W. BROWN
315 Concord Ave, Apt #2
Greensburg, PA 15601

Plaintiffs,

v.

CLEVELAND INDIANS BASEBALL
COMPANY, INC.
2401 Ontario Street
Cleveland, OH 44115

and

GATEWAY ECONOMIC
DEVELOPMENT CORPORATION
OF GREATER CLEVELAND
758 Bolivar Road
Cleveland, OH 44115

and

NATIONAL PASTIME SPORTS,
LLC
280 Mill Street, Suite A
Rochester, MI 48307

and

CASE

Complaint

NANCY R MCDONNELL
CV 10 744250

JUDGE

COMPLAINT WITH JURY DEMAND

\$100.00	DEPOSITED
DEC 23 2010	
GERALD E. FUERST, Clerk of Courts	
PER	<i>[Signature]</i>

CV10744250

66545386



THE PROGRESSIVE
CORPORATION
6300 Wilson Mills Road
Mayfield Village, OH 44143

and

SCHERBA INDUSTRIES, INC.
2880 Interstate Parkway
Brunswick, OH 44212

Defendants.

PARTIES

1. Plaintiff Kimberly Johnson is the Executrix of the estate of her late husband, Douglas Johnson (herein after sometimes referred to as "Mr. Johnson"), and residing in Greensburg, Westmoreland County, Pennsylvania.

2. Plaintiff David W. Brown (hereinafter sometimes referred to as "Mr. Brown"), at all times relevant hereto, was a resident of Greensburg, Westmoreland County, Pennsylvania.

3. Defendant Cleveland Indians Baseball Company, Inc. (hereinafter sometimes referred to as "Cleveland Indians"), is and was at all times pertinent hereto a company, corporation and/or business entity engaged in owning the Cleveland Indians baseball team and managing Progressive Field with its principal place of business in Cleveland, Cuyahoga County, Ohio. Cleveland Indians, at all times pertinent hereto, was organized and/or existing under the laws of the State of Ohio and/or was licensed and/or was doing business in the State of Ohio and/or regularly did or solicited business or engaged in other persistent courses of conduct or derived substantial revenue from goods used or consumed or services rendered in the State of Ohio.

4. Defendant Gateway Economic Development Corporation of Greater Cleveland (hereinafter sometimes referred to as "Gateway"), is and was at all times pertinent hereto a company, corporation and/or business entity responsible for managing the Gateway Sports and Entertainment Complex, including Progressive Field, with its principal place of business in Cleveland, Cuyahoga County, Ohio. Gateway, at all times pertinent hereto, was organized and/or existing under the laws of the State of Ohio and/or was licensed and/or was doing business in the State of Ohio and/or regularly did or solicited business or engaged in other persistent courses of conduct or derived substantial revenue from goods used or consumed or services rendered in the State of Ohio.

5. Defendant National Pastime Sports, LLC (hereinafter sometimes referred to as "National Pastime Sports" or "NPS"), is and was at all times pertinent hereto a company, corporation and/or business entity engaged in designing, fabricating, producing and managing "Fan Fests" that engage, entertain and educate fans with its principal place of business in Rochester, Oakland County, Michigan. NPS, at all times pertinent hereto, was organized and/or existing under the laws of the State of Ohio and/or was licensed and/or was doing business in the State of Ohio and/or regularly did or solicited business or engaged in other persistent courses of conduct or derived substantial revenue from goods used or consumed or services rendered in the State of Ohio.

6. Defendant The Progressive Corporation (hereinafter sometimes referred to as "Progressive"), is and was at all times pertinent hereto a company, corporation and/or business entity engaged in providing insurance with its principal place of business in Mayfield Village, Cuyahoga County, Ohio. Progressive, at all times pertinent hereto, was organized and/or existing under the laws of the State of Ohio and/or was licensed and/or was doing business in the

State of Ohio and/or regularly did or solicited business or engaged in other persistent courses of conduct or derived substantial revenue from goods used or consumed or services rendered in the State of Ohio.

7. Defendant Scherba Industries, Inc. (hereinafter sometimes referred to as "Scherba"), is and was at all times pertinent hereto a company, corporation and/or business entity engaged in designing, manufacturing, producing, repairing, selling, leasing and/or distributing inflatable promotional materials with its principal place of business in Brunswick, Medina County, Ohio. Scherba, at all times pertinent hereto, was organized and/or existing under the laws of the State of Ohio and/or was licensed and/or was doing business in the State of Ohio and/or regularly did or solicited business or engaged in other persistent courses of conduct or derived substantial revenue from goods used or consumed or services rendered in the State of Ohio.

8. At all times relevant hereto, Defendants acted individually and/or by and through their respective agents, servants and/or employees acting within the course and scope of their agency, servitude and/or employment.

9. Plaintiff Kimberly Johnson's decedent did not bring an action against the Defendants for damages during his life for the injuries which ultimately resulted in his death.

10. No other actions for Wrongful Death have been commenced against the Defendants other than this action.

11. This action is brought to recover damages for and on behalf of:

- a. Kimberly Johnson; decedent's wife, and
- b. Amy Beth Johnson; decedent's daughter, and
- c. Faith Ann Johnson; decedent's daughter, and

d. David W. Brown.

FACTS

12. On June 12, 2010, Mr. Johnson, deceased, and a friend, Plaintiff David W. Brown (hereinafter sometimes referred to as "Mr. Brown"), decided to attend a Cleveland Indians baseball game at Progressive Field in Cleveland, Ohio.

13. At all times relevant hereto, Mr. Johnson and Mr. Brown were business invitees on the premises possessed and maintained by Defendants Gateway and Cleveland Indians, specifically Progressive Field and the Gateway Sports and Entertainment Complex.

14. Prior to this date, the Defendant Cleveland Indians contracted with Defendant National Pastime Sports to design, produce and manage a series of "Cleveland Indians – Kids Fun Days" throughout the Summer of 2010 prior to Cleveland Indians home games.

15. On June 12, 2010, a "Kids Fun Day" was set up by National Pastime Sports on the Gateway Plaza adjacent to Progressive Field and just outside the outfield ticket gate. The event involved a number of attractions designed for Cleveland Indians fans and included a large inflatable slide manufactured by Defendant Scherba Industries. The slide, known as the "Slide Home Inflatable," allowed children to climb up one side of the inflatable and ride down another as if sliding into home plate.

16. The event was staffed by a group of volunteers provided by Defendant Progressive and trained by Defendant National Pastime Sports.

17. Approximately one hour before the baseball game began, Mr. Johnson and Mr. Brown stopped on a sidewalk adjacent to the event to look at a wall of fame display depicting past Cleveland Indians players.

18. At this moment, Mr. Brown heard screams and turned to see the Slide Home Inflatable collapsing towards Mr. Johnson and himself. Mr. Brown and Mr. Johnson were slammed to the ground and pinned beneath the inflatable.

19. At the time of collapse, as many as nine children were on the inflatable. This grossly exceeded the maximum number of individuals allowed on the slide at any given time, which were two large children or three small children. Although the Slide Home Inflatable was required to be secured by a 250 lbs. ballast, it was anchored solely by four sandbags and one 55 gallon drum full of water.

20. After freeing himself, Mr. Brown and a number of individuals lifted the inflatable to find Mr. Johnson lying underneath, bleeding from scrapes on his arms and legs.

21. Mr. Johnson was taken into the stadium where he was examined by the Cleveland Indians medical staff. Mr. Johnson complained of significant back pain and was subsequently transported to the Cleveland Clinic by ambulance.

22. As a result of the accident, Mr. Johnson suffered a burst fracture of the T12 vertebra with retropulsion and mild narrowing of the central canal, a compression deformity of the superior end plate of the T5 vertebra and a burst fracture of the L1 vertebral body. Upon his release from the Cleveland Clinic on June 14, 2010, Mr. Johnson returned to his home in Greensburg, Pennsylvania where he continued to experience significant back pain.

23. On June 20, 2010, at approximately 11:30 P.M. EST, Mr. Johnson collapsed at his home and an ambulance was called. EMTs arrived at approximately 11:40 P.M. EST and noted that Mr. Johnson was suffering cardiac arrest. Mr. Johnson did not respond to CPR and he was transported to the Excelsior Westmoreland Hospital Emergency Room in Greensburg,

Pennsylvania. Mr. Johnson was pronounced dead by an emergency room physician at 12:13 A.M. EST on June 21, 2010.

24. A subsequent autopsy established that Mr. Johnson died as a result of a pulmonary embolism caused by the blunt force trauma of the "Slide Home Inflatable" collapse on June 12, 2010.

25. As a further result of the accident, Plaintiff David W. Brown suffered serious and permanent injuries, including but not limited to a closed hand injury, injury to his neck and back as well as psychological injury including but not limited to post-traumatic stress disorder, headaches, sleep loss and post concussion syndrome.

FIRST CLAIM FOR RELIEF

(Negligence – Survival Action)

Now comes Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, who for this First Claim for Relief against Defendant Gateway Economic Development Corporation of Greater Cleveland states as follows;

26. Plaintiff Kimberly Johnson hereby incorporates by reference all preceding paragraphs as though set forth more fully at length herein.

27. Defendant Gateway had a duty to maintain, inspect, repair and warn business invitees about dangerous conditions located on the aforesaid Gateway Sports and Entertainment Complex premises, including but not limited to the "Slide Home Inflatable" situated on the Gateway Plaza adjacent to Progressive Field.

28. Defendant Gateway was careless, negligent and/or reckless in failing to protect invitees from the dangerous condition of the "Slide Home Inflatable", generally and in the following particulars:

- a. Failing to properly secure and/or anchor the "Slide Home Inflatable" prior to operation;
- b. Erecting the "Slide Home Inflatable" in an open area susceptible to wind and other weather conditions;
- c. Failing to adequately train, instruct and/or supervise those responsible for erecting and/or operating the "Slide Home Inflatable" with respect to the proper means of securing/anchoring the inflatable and/or the maximum number of individuals allowed on the slide during use;
- d. Failing to inspect the "Slide Home Inflatable" prior to and/or during use to ensure that it was adequately secured/anchored and/or that it was operated in a safe and reasonable manner, particularly with respect to the maximum number of individuals allowed on the slide at any one time;
- e. Failing to adequately cordon off the area around the "Slide Home Inflatable" so as to protect bystanders from serious injury in the event the inflatable collapsed and/or fell over;
- f. In maintaining a hazardous condition on its property, consisting of an inadequately anchored/secured and/or overloaded inflatable slide;
- g. Failing to label and/or warn about the aforesaid dangerous condition on its property; and
- h. Failing to have due regard for the rights and safety of business invitees on the premises.

29. As a direct and proximate result of Defendant Gateway's negligence, carelessness, recklessness and/or other liability producing conduct Plaintiff Kimberly Johnson's decedent suffered, among other injuries, fractures of the T12 and L1 vertebrae and a pulmonary embolism that ultimately caused his death.

30. Plaintiff Kimberly Johnson claims on behalf of the Estate any and all damages to which recovery may be made under the Ohio Survival Statute, Ohio Rev. Code Ann. § 2305.21, which include, but are not limited to the following:

- a. Loss of the ordinary pleasures of life;
- b. Pain, suffering and mental anguish;

- c. Medical and hospital expenses for the treatment of decedent's injuries;
- d. Loss of past wages and future earning capacity;
- e. Other financial losses suffered as a result of the decedent's death; and
- f. Any and all expenses incurred by the Estate.

WHEREFORE, Plaintiff Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, demands judgment against Defendant Gateway Economic Development Corporation of Greater Cleveland in the First Claim for Relief in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), plus costs and punitive damages.

SECOND CLAIM FOR RELIEF

(Negligence – Wrongful Death Action)

Now comes Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, who for this Second Claim for Relief against Defendant Gateway Economic Development Corporation of Greater Cleveland states as follows;

31. Plaintiff Kimberly Johnson hereby incorporates by reference all preceding paragraphs as though set forth more fully at length herein.

32. As a direct and proximate result of Defendant Gateway's negligence, carelessness, recklessness and/or other liability producing conduct as set forth in all paragraphs above, which are incorporated herein by reference, Plaintiff Kimberly Johnson claims damages under the Ohio Wrongful Death Statute, Ohio Rev. Code Ann. § 2125.01, *et al.*, for and on behalf of the decedent for, including but not limited to:

- a. Loss of services and contribution of the decedent which he would have rendered during his lifetime;
- b. Loss of support from the reasonably expected earning capacity of the decedent;

- c. Loss of prospective inheritance to the decedent's heirs at law at the time of decedent's death;
- d. Funeral and burial expenses;
- e. Expenses of Administration of the Estate;
- f. Loss of consortium, companionship, comfort, society, guidance, solace and protection; and
- g. Mental anguish.

WHEREFORE, Plaintiff Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, demands judgment against Defendant Gateway Economic Development Corporation of Greater Cleveland in the Second Claim for Relief in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), plus costs and punitive damages.

THIRD CLAIM FOR RELIEF

(Negligence – Survival Action)

Now comes Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, who for this Third Claim for Relief against Defendant Cleveland Indians Baseball Company, Inc. states as follows;

33. Plaintiff Kimberly Johnson hereby incorporates by reference all preceding paragraphs as though set forth more fully at length herein.

34. Defendant Cleveland Indians had a duty to maintain, inspect, repair and warn business invitees about dangerous conditions located on the aforesaid Gateway Sports and Entertainment Complex premises, including but not limited to the "Slide Home Inflatable" situated on the Gateway Plaza adjacent to Progressive Field.

35. Defendant Cleveland Indians was careless, negligent and/or reckless in failing to protect invitees from the dangerous condition of the "Slide Home Inflatable", generally and in the following particulars:

- a. Failing to properly secure and/or anchor the "Slide Home Inflatable" prior to operation;
- b. Erecting the "Slide Home Inflatable" in an open area susceptible to wind and other weather conditions;
- c. Failing to adequately train, instruct and/or supervise those responsible for erecting and/or operating the "Slide Home Inflatable" with respect to the proper means of securing/anchoring the inflatable and/or the maximum number of individuals allowed on the slide during use;
- d. Failing to inspect the "Slide Home Inflatable" prior to and/or during use to ensure that it was adequately secured/anchored and/or that it was operated in a safe and reasonable manner, particularly with respect to the maximum number of individuals allowed on the slide at any one time;
- e. Failing to adequately cordon off the area around the "Slide Home Inflatable" so as to protect bystanders from serious injury in the event the inflatable collapsed and/or fell over;
- f. In maintaining a hazardous condition on its property, consisting of an inadequately anchored/secured and/or overloaded inflatable slide;
- g. Failing to label and/or warn about the aforesaid dangerous condition on its property; and
- h. Failing to have due regard for the rights and safety of business invitees on the premises.

36. As a direct and proximate result of Defendant Cleveland Indians' negligence, carelessness, recklessness and/or other liability producing conduct, Plaintiff Kimberly Johnson's decedent suffered the injuries and damages set forth above, which are incorporated by reference as though more fully set forth at length herein.

WHEREFORE, Plaintiff Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, demands judgment against Defendant Cleveland Indians Baseball Company,

Inc. in the Third Claim for Relief in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), plus costs and punitive damages.

FOURTH CLAIM FOR RELIEF

(Negligence – Wrongful Death Action)

Now comes Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, who for this Fourth Claim for Relief against Defendant Cleveland Indians Baseball Company, Inc. states as follows;

37. Plaintiff Kimberly Johnson hereby incorporates by reference all preceding paragraphs as though set forth more fully at length herein.

38. As a direct and proximate result of Defendant Cleveland Indians' negligence, carelessness, recklessness and/or other liability producing conduct, Plaintiff Kimberly Johnson claims the damages recoverable under the Ohio Wrongful Death Statute set forth above, which are incorporated by reference as though more fully set forth at length herein.

WHEREFORE, Plaintiff Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, demands judgment against Defendant Cleveland Indians Baseball Company, Inc. in the Fourth Claim for Relief in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), plus costs and punitive damages.

FIFTH CLAIM FOR RELIEF

(Negligence – Survival Action)

Now comes Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, who for this Fifth Claim for Relief against Defendant National Pastime Sports, LLC states as follows;

39. Plaintiff Kimberly Johnson hereby incorporates by reference all preceding paragraphs as though set forth more fully at length herein.

40. Defendant NPS's careless, negligent, reckless and/or other liability producing conduct consisted of, *inter alia*:

- a. Failing to properly secure and/or anchor the "Slide Home Inflatable" prior to operation;
- b. Erecting the "Slide Home Inflatable" in an open area susceptible to wind and other weather conditions;
- c. Failing to suspend use of the "Slide Home Inflatable" during periods of inclement weather, including significant gusts of wind;
- d. Failing to adequately train, instruct and/or supervise those responsible for erecting and/or operating the "Slide Home Inflatable" with respect to the proper means of securing/anchoring the inflatable and/or the maximum number of individuals allowed on the slide during use;
- e. Failing to instruct and/or warn those responsible for erecting and/or operating the "Slide Home Inflatable" of the risk of collapse;
- f. Failing to inspect the "Slide Home Inflatable" prior to and/or during use to ensure that it was adequately secured/anchored and/or that it was operated in a safe and reasonable manner, particularly with respect to the maximum number of individuals allowed on the slide at any one time;
- g. Exceeding the maximum number of individuals allowed on the "Slide Home Inflatable" at any one time, such that the inflatable became overloaded and collapsed;
- h. Failing to adequately cordon off the area around the "Slide Home Inflatable" so as to protect bystanders from serious injury in the event the inflatable collapsed and/or fell over; and
- i. Failing to label and/or warn those on and in the vicinity of the "Slide Home Inflatable" of the risk of collapse.

41. As a direct and proximate result of Defendant NPS's negligence, carelessness, recklessness and/or other liability producing conduct, Plaintiff Kimberly Johnson's decedent suffered the injuries and damages set forth above, which are incorporated by reference as though

more fully set forth at length herein.

WHEREFORE, Plaintiff Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased; demands judgment against Defendant National Pastime Sports, LLC in the Fifth Claim for Relief in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), plus costs and punitive damages.

SIXTH CLAIM FOR RELIEF

(Negligence – Wrongful Death Action)

Now comes Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, who for this Sixth Claim for Relief against Defendant National Pastime Sports, LLC states as follows;

42. Plaintiff Kimberly Johnson hereby incorporates by reference all preceding paragraphs as though set forth more fully at length herein.

43. As a direct and proximate result of Defendant NPS's negligence, carelessness, recklessness and/or other liability producing conduct, Plaintiff Kimberly Johnson claims the damages recoverable under the Ohio Wrongful Death Statute set forth above, which are incorporated by reference as though more fully set forth at length herein.

WHEREFORE, Plaintiff Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, demands judgment against Defendant National Pastime Sports, LLC in the Sixth Claim for Relief in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), plus costs and punitive damages.

SEVENTH CLAIM FOR RELIEF

(Negligence – Survival Action)

Now comes Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, who for this Seventh Claim for Relief against Defendant The Progressive Corporation states as follows;

44. Plaintiff Kimberly Johnson hereby incorporates by reference all preceding paragraphs as though set forth more fully at length herein.

45. Defendant Progressive's careless, negligent, reckless and/or other liability producing conduct consisted of, *inter alia*:

- a. Failing to properly secure and/or anchor the "Slide Home Inflatable" prior to operation;
- b. Erecting the "Slide Home Inflatable" in an open area susceptible to wind and other weather conditions;
- c. Failing to suspend use of the "Slide Home Inflatable" during periods of inclement weather, including significant gusts of wind;
- d. Failing to adequately train, instruct and/or supervise those responsible for erecting and/or operating the "Slide Home Inflatable" with respect to the proper means of securing/anchoring the inflatable and/or the maximum number of individuals allowed on the slide during use;
- e. Failing to instruct and/or warn those responsible for erecting and/or operating the "Slide Home Inflatable" of the risk of collapse;
- f. Failing to inspect the "Slide Home Inflatable" prior to and/or during use to ensure that it was adequately secured/anchored and/or that it was operated in a safe and reasonable manner, particularly with respect to the maximum number of individuals allowed on the slide at any one time;
- g. Exceeding the maximum number of individuals allowed on the "Slide Home Inflatable" at any one time, such that the inflatable became overloaded and collapsed;

- h. Failing to adequately cordon off the area around the "Slide Home Inflatable" so as to protect bystanders from serious injury in the event the inflatable collapsed and/or fell over; and
- i. Failing to label and/or warn those on and in the vicinity of the "Slide Home Inflatable" of the risk of collapse.

46. As a direct and proximate result of Defendant Progressive's negligence, carelessness, recklessness and/or other liability producing conduct, Plaintiff Kimberly Johnson's decedent suffered the injuries and damages set forth above, which are incorporated by reference as though more fully set forth at length herein.

WHEREFORE, Plaintiff Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, demands judgment against Defendant The Progressive Corporation in the Seventh Claim for Relief in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), plus costs and punitive damages.

EIGHTH CLAIM FOR RELIEF

(Negligence – Wrongful Death Action)

Now comes Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, who for this Eighth Claim for Relief against Defendant The Progressive Corporation states as follows;

47. Plaintiff Kimberly Johnson hereby incorporates by reference all preceding paragraphs as though set forth more fully at length herein.

48. As a direct and proximate result of Defendant Progressive's negligence, carelessness, recklessness and/or other liability producing conduct, Plaintiff Kimberly Johnson claims the damages under the Ohio Wrongful Death Statute set forth above, which are incorporated by reference as though more fully set forth at length herein.

WHEREFORE, Plaintiff Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, demands judgment against Defendant The Progressive Corporation in the Eighth Claim for Relief in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), plus costs and punitive damages.

NINTH CLAIM FOR RELIEF

(Strict Liability – Survival Action)

Now comes Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, who for this Ninth Claim for Relief against Defendant Scherba Industries, Inc. states as follows;

49. Plaintiff Kimberly Johnson hereby incorporates by reference all preceding paragraphs as though set forth more fully at length herein.

50. At all times relevant hereto, Defendant Scherba Industries designed, manufactured, produced, leased, bailed and/or distributed the aforesaid "Slide Home Inflatable". The injuries and damages sustained by Plaintiff Kimberly Johnson's decedent as set forth above, which are incorporated herein by reference, were caused by and resulted from Defendant Scherba Industries' breach of its responsibilities and legal duties for which the defendant is strictly liable, pursuant to 402A of the Restatement (Second) of Torts, generally and in the following particulars:

- a. At all times relevant hereto, the defendant was the designer, manufacturer, producer, lessor, bailor and/or distributor of the aforesaid product, which was a product in a defective condition unreasonably dangerous to the decedent herein; and
- b. The defendant was engaged in the business of designing, manufacturing, producing, leasing, bailing and/or distributing said defective product and knew that the aforesaid product would be used without substantial change or alteration, or in the alternative, that any such alteration was foreseeable.

51. The aforesaid "Slide Home Inflatable" was defective pursuant to 402A Restatement (Second) of Torts, generally and in the following particulars:

- a. The "Slide Home Inflatable" failed to include adequate means by which to secure and/or anchor the slide, placing the inflatable at an increased risk of tip over and collapse;
- b. The slide failed to adequately distribute the weight of individuals climbing up one side of the inflatable and sliding down the other such that the product posed an increased risk of tip over and collapse;
- c. The slide failed to include a secondary restraint system that would prevent the inflatable from tipping over or collapsing in the event the primary means of securing/anchoring the slide failed;
- d. The product contained inadequate and/or defective instructions and/or warnings, particularly as it pertains to the proper method of securing/anchoring/positioning the slide, the maximum number of individuals allowable on the inflatable at a given time, operating the inflatable during inclement weather and/or the risks of collapse; and
- e. The product contained other defects in its design, construction and manufacture, which contributed to the decedent's damages and injuries as shall be more fully determined.

52. As a direct and proximate result of the defective condition of the "Slide Home Inflatable", Plaintiff Kimberly Johnson's decedent suffered the injuries and damages set forth above, which are incorporated by reference as though more fully set forth at length herein.

WHEREFORE, Plaintiff Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, demands judgment against Defendant Scherba Industries, Inc. in the Ninth Claim for Relief in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), plus costs and punitive damages.

TENTH CLAIM FOR RELIEF

(Strict Liability – Wrongful Death Action)

Now comes Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, who for this Tenth Claim for Relief against Defendant Scherba Industries, Inc. states as follows;

53. Plaintiff Kimberly Johnson hereby incorporates by reference all preceding paragraphs as though set forth more fully at length herein.

54. As a direct and proximate result of the defective condition of the "Slide Home Inflatable", Plaintiff Kimberly Johnson claims the damages under the Ohio Wrongful Death Statute set forth above, which are incorporated by reference as though more fully set forth at length herein.

WHEREFORE, Plaintiff Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, demands judgment against Defendant Scherba Industries, Inc. in the Tenth Claim for Relief in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), plus costs and punitive damages.

ELEVENTH CLAIM FOR RELIEF

(Breach of Warranty – Survival Action)

Now comes Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, who for this Eleventh Claim for Relief against Defendant Scherba Industries, Inc. states as follows;

55. Plaintiff Kimberly Johnson hereby incorporates by reference all preceding paragraphs as though set forth more fully at length herein.

56. Defendant Scherba Industries breached express warranties contained in its labeling, advertising and general promotion of the aforesaid "Slide Home Inflatable".

57. Plaintiff relied upon the aforesaid warranties and representations in believing the "Slide Home Inflatable" was safe for normal use.

58. Defendant Scherba Industries is liable to Plaintiff Kimberly Johnson as a result of the aforesaid product's failure to comply with the aforementioned express warranties generally and in the following particulars:

- a. Contrary to the warranties contained in its labeling, advertising and general promotion, the aforesaid product failed to have the necessary features and safeguards required to render it safe for normal use, in light of the recognizable and foreseeable dangers involved in said usage, as set forth above, which are incorporated by reference as though more fully set forth at length herein.

59. Defendant Scherba Industries has breached the implied warranties of merchantability and fitness for a particular purpose (i.e. for use under normal, foreseeable and expected conditions), in that the aforesaid product failed to have the necessary features required to render it safe for normal and expected use, in light of the risks and foreseeable dangers involved in said usage, as set forth above, which are incorporated by reference as though more fully set forth at length herein.

60. As a direct and proximate result of Defendant Scherba Industries' breach of warranties, Plaintiff Kimberly Johnson's decedent suffered the injuries and damages set forth above, which are incorporated by reference as though more fully set forth at length herein.

WHEREFORE, Plaintiff Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, demands judgment against Defendant Scherba Industries, Inc. in the Eleventh Claim for Relief in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), plus costs and punitive damages.

TWELFTH CLAIM FOR RELIEF

(Breach of Warranty – Wrongful Death Action)

Now comes Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, who for this Twelfth Claim for Relief against Defendant Scherba Industries, Inc. states as follows;

61. Plaintiff Kimberly Johnson hereby incorporates by reference all preceding paragraphs as though set forth more fully at length herein.

62. As a direct and proximate result of Defendant Scherba Industries' breach of warranties, Plaintiff Kimberly Johnson claims the damages under the Ohio Wrongful Death Statute set forth above, which are incorporated by reference as though more fully set forth at length herein.

WHEREFORE, Plaintiff Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, demands judgment against Defendant Scherba Industries, Inc. in the Twelfth Claim for Relief in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), plus costs and punitive damages.

THIRTEENTH CLAIM FOR RELIEF

(Negligence – Survival Action)

Now comes Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, who for this Thirteenth Claim for Relief against Defendant Scherba Industries, Inc. states as follows;

63. Plaintiff Kimberly Johnson hereby incorporates by reference all preceding paragraphs as though set forth more fully at length herein.

64. Defendant Scherba's careless, negligent, reckless and/or other liability producing conduct consisted of, *inter alia*:

- a. Designing an inflatable slide that failed to include adequate means by which to secure and/or anchor the slide, placing the inflatable at an increased risk of tip over and collapse;
- b. Designing an inflatable slide that failed to adequately distribute the weight of individuals climbing up one side of the inflatable and sliding down the other such that the product posed an increased risk of tip over and collapse;
- c. Designing an inflatable slide that failed to include a secondary restraint system that would prevent the inflatable from tipping over or collapsing in the event the primary means of securing/anchoring the slide failed;
- d. Designing a product that contained inadequate and/or defective instructions and/or warnings, particularly as it pertains to the proper method of securing/anchoring/positioning the slide, the maximum number of individuals allowable on the inflatable at a given time, operating the inflatable during inclement weather and/or the risks of collapse;
- e. Failing to adequately train, instruct and/or supervise those responsible for erecting and/or operating the "Slide Home Inflatable" with respect to the proper means of securing/anchoring the inflatable and/or the maximum number of individuals allowed on the slide during use;
- f. Failing to instruct and/or warn those responsible for erecting and/or operating the "Slide Home Inflatable" of the risk of collapse;
- g. Failing to designate an area surrounding the "Slide Home Inflatable" that must be free of bystanders in order to protect bystanders from serious injury in the event the inflatable collapsed and/or fell over;
- h. Failing to label and/or warn those on and in the vicinity of the "Slide Home Inflatable" of the risk of collapse; and
- i. Designing a product that contained other defects in its design, construction and manufacture, which contributed to the decedent's damages and injuries as shall be more fully determined.

65. As a direct and proximate result of Defendant Scherba Industries' negligence, carelessness, recklessness and/or other liability producing conduct, Plaintiff Kimberly Johnson's

decendent suffered the injuries and damages set forth above, which are incorporated by reference as though more fully set forth at length herein.

WHEREFORE, Plaintiff Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, demands judgment against Defendant Scherba Industries, Inc. in the Thirteenth Claim for Relief in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), plus costs and punitive damages.

FOURTEENTH CLAIM FOR RELIEF

(Negligence – Wrongful Death Action)

Now comes Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, who for this Fourteenth Claim for Relief against Defendant Scherba Industries, Inc. states as follows;

66. Plaintiff Kimberly Johnson hereby incorporates by reference all preceding paragraphs as though set forth more fully at length herein.

67. As a direct and proximate result of Defendant Scherba's negligence, carelessness, recklessness and/or other liability producing conduct, Plaintiff Kimberly Johnson claims the damages under the Ohio Wrongful Death Statute set forth above, which are incorporated by reference as though more fully set forth at length herein.

WHEREFORE, Plaintiff Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased, demands judgment against Defendant Scherba Industries, Inc. in the Fourteenth Claim for Relief in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), plus costs and punitive damages.

FIFTEENTH CLAIM FOR RELIEF

Now comes David Brown who for this Fifteenth Claim for Relief against Defendants Cleveland Indians Baseball Company, Inc., Gateway Economic Development Corporation of Greater Cleveland, National Pastime Sports, LLC, The Progressive Corporation, and Scherba Industries, Inc, states as follows:

68. Plaintiff David W. Brown hereby incorporates by reference, all proceeding paragraphs as though set forth more fully at length herein.

69. That as a direct and proximate result of the negligence of Defendants and the strict liability and breach of warranty of Defendant Scherba Industries, Inc., Plaintiff David W. Brown, sustained serious and permanent injuries including but not limited to injuries to his head, neck and back as well as psychological injury, emotional distress, mental pain and suffering, causing pain, suffering both physical and emotional; and as a result thereof, he has undergone hospital, medical and psychological treatment and counseling to his expense and obligation; and has reason to believe that he will require hospital, medical and psychological treatment and counseling in the future to his continuing expense and obligation; his activities have been restricted; his ability to enjoy life has been adversely affected; he has lost income, and his ability to earn an income has been permanently impaired.

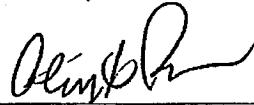
70. Defendants actions demonstrated carelessness, recklessness and a total disregard for the safety and well being of plaintiff and such conduct had a great probability of causing substantial harm and warrants an award of punitive damages against Defendants.

WHEREFORE, Plaintiff David W. Brown demands judgment against Defendants, jointly and severally, in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), for compensatory damages, and in separate sum of money in an amount in excess

of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), for punitive damages, in addition to interest, costs and to all and any other relief to which he is entitled to under the law.

WHEREFORE, Plaintiffs Kimberly Johnson, as Executrix of the Estate of Douglas Johnson, deceased and David W. Brown demands judgment against Defendants, jointly and severally, in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), for compensatory damages, and in separate sum of money in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), for punitive damages, in addition to interest, costs and to all and any other relief to which he is entitled to under the law.

Respectfully Submitted,



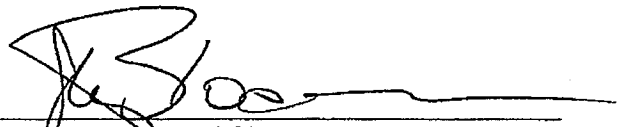
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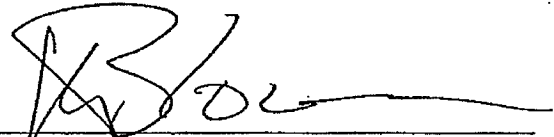


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JURY DEMAND

Plaintiffs hereby demand a trial by the maximum number of jurors allowed by law.



STEPHEN E. BLOOM (#0030303)