

CAUSE NO. 342-26803413

AMADO ESPARZA, Individually and as	§	IN THE DISTRICT COURT
Representative of the Estate of ROSA	§	
ESPARZA; ANTONIO ESPARZA;	§	
ANTONIO ESPARZA, JR.; ARNOLDO	§	
ESPARZA; ARACELY ESPARZA	§	
SEGOVIA; and RONAL SEGOVIA;	§	
	§	
v.	§	342nd JUDICIAL DISTRICT
	§	
SIX FLAGS ENTERTAINMENT	§	
CORPORATION; SIX FLAGS THEME	§	
PARKS, INC.; TEXAS FLAGS, LTD.;	§	
SIX FLAGS OVER TEXAS, INC.; and	§	
GERSTLAUER AMUSEMENT RIDES,	§	
GMBH.	§	TARRANT COUNTY, TEXAS

PLAINTIFFS' THIRD AMENDED PETITION

Plaintiffs AMADO ESPARZA, Individually and as Representative of the Estate of ROSA ESPARZA; ANTONIO ESPARZA; ANTONIO ESPARZA, JR.; ARNOLDO ESPARZA; ARACELY ESPARZA SEGOVIA; and RONAL SEGOVIA (collectively, "Plaintiffs"), file this Third Amended Petition, complaining of Defendants SIX FLAGS ENTERTAINMENT CORPORATION; SIX FLAGS THEME PARKS, INC.; TEXAS FLAGS, LTD.; SIX FLAGS OVER TEXAS, INC.; and GERSTLAUER AMUSEMENT RIDES, GMBH, and for cause of action, state the following:

SUMMARY

Six Flags has known for decades the real risks and extreme dangers posed by roller coasters and other amusement rides. Yet, instead of making their rides safer, Six Flags continually pushes the envelope, building extreme roller coasters that are bigger, faster, and more dangerous. However, most egregious of all, Six Flags continues to be reactive, rather than proactive with regard to common sense safety systems and operations. As a result, Rosa Irene Esparza is dead. A wife of thirty-five years is gone, never to be seen again by her husband, children, or grandchildren.

On July 19, 2013, Rosa Esparza visited Six Flags Over Texas for the first and last time. Rosa anticipated an afternoon of safe, family fun with her daughter, son-in-law,

and her grandchildren. Little did she know, Six Flags knew as early as 1978 that, in the absence of a safety belt, passengers bear a greater risk of being ejected from a roller coaster. In fact, multiple times during the preceding thirty-five year period, passengers had fallen to their deaths while riding Six Flags' roller coasters, only to have Six Flags add safety belts after it was too late. Despite this, in the more-than-\$10-million redesign of the New Texas Giant, Six Flags and Gerstlauer designed, manufactured, promoted, and/or distributed defective hybrid coaster trains with inadequate passenger restraint systems and warnings among other things.

After Rosa's death, post-incident inspections showed that various parts of the passenger restraint systems on the train were experiencing inconsistencies and intermittent failures. In addition, Six Flags has now admitted that, after these inspections, they replaced a "limit switch" for a restraint *in a seat in the very train car in which Rosa was riding* because Six Flags found the switch to be defective.

Ultimately, as a result of Defendants' negligence, gross negligence, and product defects, Rosa was ejected from the Texas Giant and fell to her death after striking a vertical support beam while her daughter and son-in-law rode along in horror and while her grandchildren waited for her at the end of the ride.

The Defendants proximately caused the Plaintiffs' damages and injuries, and the Court should find them liable for the causes of action pleaded herein.

DISCOVERY CONTROL PLAN

1. Pursuant to Rules 190.1 and 190.3 of the Texas Rules of Civil Procedure, Plaintiffs state that discovery in this cause is intended to be conducted under **Level 3**.

JURY DEMAND

2. Pursuant to Rules 216 and 217 of the Texas Rules of Civil Procedure, Plaintiffs request a jury trial of this matter. Accordingly, Plaintiffs tendered the proper jury fee with the filing of Plaintiffs' Original Petition.

RULE 47 STATEMENT OF MONETARY RELIEF SOUGHT

3. Plaintiffs request that the jury award damages in an amount that is fair and reasonable compensation for their damages. However, to be eligible to recover more than \$1,000,000, Rule 47 of the Texas Rules of Civil Procedure expressly *requires* Plaintiffs to

provide an affirmative statement that they are seeking monetary relief *in excess of* \$1,000,000. Accordingly, to ensure their eligibility to recover an amount *more than* \$1,000,000 and only because it is expressly required by rule, Plaintiffs affirmatively plead that they are seeking monetary relief in an amount (i) that the jury determines to be fair and reasonable and (ii) that is *more than* \$1,000,000.

PARTIES

4. Plaintiff AMADO ESPARZA, Individually, and as Representative of the Estate of ROSA ESPARZA, is an individual residing in the state of Texas. AMADO ESPARZA is the son of ROSA ESPARZA, deceased, and the duly-appointed representative of the Estate of ROSA ESPARZA.
5. Plaintiff ANTONIO ESPARZA is an individual residing in the state of Texas. He is the husband of ROSA ESPARZA, deceased.
6. Plaintiff ANTONIO ESPARZA, JR. is an individual residing in the state of Texas. He is the son of ROSA ESPARZA, deceased.
7. Plaintiff ARNOLDO ESPARZA is an individual residing in the state of Texas. He is the son of ROSA ESPARZA, deceased.
8. Plaintiff ARACELY ESPARZA SEGOVIA is an individual residing in the state of Texas. She is the daughter of ROSA ESPARZA, deceased.
9. Plaintiff RONAL SEGOVIA is an individual residing in the state of Texas. He is the son-in-law of ROSA ESPARZA, deceased. He is the husband of Plaintiff ARACELY ESPARZA SEGOVIA.
10. Defendant SIX FLAGS ENTERTAINMENT CORPORATION is a Delaware corporation, doing business in the state of Texas, with its principal place of business in Texas. Six

Flags Entertainment Corporation has appeared and answered for all purposes and this amended petition is being served upon its counsel of record.

11. Defendant SIX FLAGS THEME PARKS, INC. is a Delaware corporation, doing business in the state of Texas, with its principal place of business in Texas. Six Flags Theme Parks, Inc. has appeared and answered for all purposes and this amended petition is being served upon its counsel of record.
12. Defendant TEXAS FLAGS, LTD. is a Texas corporation, doing business in the state of Texas, with its principal place of business in Texas. Texas Flags, Ltd. has appeared and answered for all purposes and this amended petition is being served upon its counsel of record.
13. Defendant SIX FLAGS OVER TEXAS, INC. is a Delaware corporation, doing business in the state of Texas, with its principal place of business in Texas. Six Flags Over Texas, Inc. has appeared and answered for all purposes and this amended petition is being served upon its counsel of record.
14. Defendant GERSTLAUER AMUSEMENT RIDES, GMBH is a German entity doing business in the state of Texas with its principal place of business in Münsterhausen, Germany. Gerstlauer Amusement Rides, GmbH has appeared and answered for all purposes and this amended petition is being served upon its counsel of record.
15. Defendants Six Flags Entertainment Corporation, Six Flags Theme Parks, Inc., Texas Flags, Ltd., and Six Flags Over Texas, Inc. are herein referred to collectively as the “Six Flags Defendants” or “Six Flags.” The Six Flags Defendants and Gerstlauer Amusement Rides, GmbH are herein referred to collectively as the “Defendants.”

VENUE AND JURISDICTION

16. Venue is proper in this Court by virtue of sections 15.001 *et. seq.* of the Texas Civil Practice & Remedies Code because the causes of action which are the basis of this case arose in whole or in part in this county, and/or the Six Flags Defendants' residence or principal office is in this county. This Court has jurisdiction because Plaintiffs' damages are within the jurisdictional limits of this Court.

FACTS

17. The Six Flags Defendants market The Texas Giant roller-coaster with a keen awareness that the lure of The Texas Giant to the park's visitors is that it hurdles riders along precipitous drops at extreme speeds. The Six Flags Defendants encourage visitors to the park, such as the Esparza family, to believe that they are experiencing the *illusion* of danger, without experiencing any *actual* danger. As Rosa Esparza's tragic death starkly illustrates, errors on the part of the Defendants turned a thrilling illusion into a nightmarish reality. Customers of the park expect mock scares and delighted screams as they ride the Texas Giant roller-coaster, but they certainly do not expect to be placed in any real danger, whatsoever.
18. The Six Flags Defendants operate the world's largest amusement park corporation, in terms of number of properties, and the fifth largest, in terms of attendance. The Defendants were well aware of the dangers posed by their roller-coasters. This awareness came both from incidents at Six Flags parks involving roller-coasters and other rides, and from tragedies involving ejections of riders from roller-coasters without seat belts at other locations in the amusement ride industry. Previous incidents at Six Flags parks, alone put the Defendants on notice of the dangers of rider-ejection posed by the Texas Giant. For example, in 1978, a girl was ejected from the "Colossus" roller-coaster at Six Flags Magic Mountain in Los

Angeles, and fell to her death. In 1981, a Six Flags employee was ejected from the “Rolling Thunder” roller-coaster at Six Flags Great Adventure in New Jersey. In 1987, a girl fell to her death while riding the “Lightnin’ Loops” roller-coaster at Six Flags Great Adventure in New Jersey. In 2001, a passenger was ejected from the Starfish ride at Six Flags Discovery Kingdom in California when the pneumatic valve on the safety bar failed. Then in 2004, a man was thrown to his death from a “Superman: Ride of Steel” roller-coaster in Six Flags New England, in Massachusetts. These are just the incidents involving injuries and deaths caused by roller-coasters occurring at Six Flags parks. The Defendants also knew or should have known about numerous incidents involving roller-coasters at *other* amusement parks. More often than not, the response of the Six Flags Defendants to roller-coaster tragedies at their parks has been merely to feign surprise and to belatedly add safety belts in an attempt to calm the public’s fears.

19. In addition, other incidents and tragedies at Six Flags parks placed the Six Flags Defendants on notice of the dangers associated with their roller-coasters and the need for better safety operations and training of their employees. For example, in 1996, a Six Flags employee was killed while attempting to cross the tracks in front of a moving “Revolution” roller-coaster at Six Flags Magic Mountain in California. In 1998, twenty-three people were stuck upside down for nearly three hours on the “Demon Coaster” in Six Flags Great America in Illinois after a guide wheel separated from the axle of the last car, triggering a safety mechanism that kept the train from operating. And, in 2008, a teenager was decapitated at Six Flags Over Georgia when he attempted to retrieve a hat that he lost while riding the “Batman: The Ride” roller-coaster.

20. This lawsuit arises out of a family’s trip to a Six Flags amusement park that turned into a

horrific nightmare. On July 19, 2013, Rosa Esparza, together with her daughter, Aracely Esparza Segovia, her son-in-law, Ronal Segovia, and her grandchildren, Abraham Segovia and Ronald Jaden Segovia, went to the Six-Flags-Over-Texas amusement park in Arlington, Texas for what the Six Flags Defendants had led them to believe would be a safe and fun family adventure.

21. Like many of the park's patrons, Rosa Esparza, her daughter, and her son-in-law decided to ride one the park's signature attractions – The Texas Giant roller-coaster. Rosa Esparza apparently met all of Six Flags' requirements to ride the roller-coaster because no Six Flags employee prevented her from riding on the roller-coaster. The Texas Giant's hybrid roller coaster train –which was designed, manufactured, promoted, and/or distributed by Defendants–had one safety bar restraint for each seat, but it did not have lap seat belts or shoulder harness seat belts.
22. Rosa Esparza sat in the front left seat of the second car in the roller-coaster train. Her son-in-law sat in the back left seat of the first car of the train, directly in front of Rosa Esparza, and her daughter sat in the back right seat of the first car of the train. Nobody sat in the seat directly to Rosa Esparza's right.
23. As the roller-coaster was in its first large descent, Rosa Esparza's daughter heard screaming and yelling behind her, and turned to see her mother in the process of being thrown out of the car, out from behind the safety bar in her seat, struggling in an upside down position in the roller-coaster car with her head down and legs up, attempting to hold on for dear life. Although Rosa Esparza desperately tried to hang on as the roller-coaster car twisted and turned, she was unable to resist the over-powering forces of the roller-coaster ride, and she was thrown against a support piling on the structure of the roller-

coaster. She was then catapulted many feet below onto the metal roof of a tunnel. Rosa Esparza died of multiple traumatic injuries caused by her horrific ejection from the roller-coaster car and being thrown into the support piling and onto the roof of the tunnel.

24. Her daughter and son-in-law were forced to complete the ride – for what seemed like an interminable time, knowing that Rosa Esparza had been thrown out of the ride, and not knowing whether she was dead or seriously injured and in need of immediate medical attention. When the roller-coaster train returned to the station at the end of the ride, her daughter and son-in-law were desperate to get out of the train, but the Six Flags employees initially refused to believe that anyone had been thrown out of the train. An agonizing period of time passed before Rosa Esparza was located on top of the tunnel.
25. The roller-coaster train at issue has a set of green lights that are supposed to light when each safety bar restraint is in the allegedly “proper” position. The Defendants maintain that a roller-coaster train cannot be dispatched unless all safety bar restraints are in their “proper” positions, such that each restraint’s green light is activated. This system of lights was confusing and dangerous because it had a tendency to create a false sense of security and complacency on the part of the operators of the ride. Operators of the ride who saw a green light for a given safety bar restraint would have been inclined to assume that the restraint necessarily was in the correct and safe position without undertaking further checks of the restraint.
26. In a series of inspections of the roller-coaster train at issue after the incident in question, a number of disturbing anomalies were observed. During the inspections, there were inconsistencies in the relative locking positions of the safety bars in various seats in the car in which Rosa Esparza had been riding, and inconsistencies and intermittent failures in the

green light system that was supposed to confirm the correct placement of the safety bars for the seats of the car. The Six Flags Defendants have now admitted that, after these inspections, they replaced a “limit switch” for a restraint *in a seat in the very car in which Mrs. Esparza was riding* because they found the switch to be defective.

27. The Defendants’ negligence, gross negligence, and defective products proximately caused the catastrophe of July 19, 2013, and the Esparza family’s injuries and damages.

CAUSES OF ACTION

Count I: Negligence (against the Six Flags Defendants)

28. Rosa Esparza was an invitee on the Six Flags Defendants’ premises, and her death was caused by the unreasonably dangerous condition of a dangerous roller-coaster on the Six Flags Defendants’ premises. The Six Flags Defendants negligently allowed the above unreasonably dangerous condition to exist, negligently created the unreasonably dangerous condition, negligently failed to remedy the unreasonably dangerous condition, and negligently or willfully failed to warn Rosa Esparza of the condition, despite the fact that the Six Flags Defendants knew, or in the exercise of ordinary care, should have known of the condition and that there was a likelihood of someone being seriously injured or killed, as was Rosa Esparza. Specifically, the Six Flags Defendants knew or should have known of the danger of a rider of the roller-coaster being ejected from a roller-coaster with an inadequate restraint system.
29. The Six Flags Defendants were guilty of negligence, among other ways, in the following respects:
- a. In allowing the unreasonably dangerous condition—a roller-coaster with an inadequate and defective restraint system to exist. The restraint system was

defective because it lacked seat belts, among other reasons;

- b. In failing to correct the unreasonably dangerous condition prior to the incident which killed Rosa Esparza, an invitee on the Six Flags Defendants' premises;
 - c. In failing to warn Rosa Esparza that the unreasonably dangerous condition existed and in failing to warn Rosa Esparza of the hazards and risks of the unreasonably dangerous condition;
 - d. In failing to protect and safeguard Rosa Esparza from the unreasonably dangerous condition;
 - e. In creating the unreasonably dangerous condition and/or activity on the premises;
 - f. In failing to establish and enforce adequate procedures and precautions to ensure that riders on the roller-coaster, such as Rosa Esparza, were not ejected;
 - g. In failing to establish and enforce adequate restrictions for body types and weights of riders of the roller-coaster; and
 - h. In failing to properly inspect, maintain, and repair the roller-coaster.
30. Agents, employees and/or borrowed servants of the Six Flags Defendants were negligent in creating and/or failing to warn of the dangerous condition. The Six Flags Defendants negligently failed to provide adequate manpower, equipment, training, and supervision to their agents, employees and/or borrowed servants.
31. Each of the foregoing acts or omissions, singularly or in combination with others, constituted negligence, which proximately caused the above-referenced occurrence and Plaintiffs' injuries and damages.

Count II: Bystander Liability (against the Six Flags Defendants)

32. Plaintiffs Aracely Esparza Segovia (daughter), and Ronal Segovia (son-in-law) are entitled to bystander damages because: 1) they were located near the scene of the tragedy, 2) they experienced a sensory and contemporaneous awareness and observance of the tragedy, and 3) they were closely related to Rosa Esparza, as indicated above.

Count III: Respondeat Superior (against the Six Flags Defendants)

33. The Six Flags Defendants are liable for the negligence of their employees and/or agents, pursuant to the doctrine of respondeat superior because the employees and/or agents were acting in the course and scope of their employment with the Six Flags Defendants at all relevant times. In the alternative, the Six Flags Defendants are liable for the negligence of their employees/agents because the employees/agents were acting as borrowed servants of the Six Flags Defendants at all relevant times.

Count IV: Negligent Hiring and Supervision (against the Six Flags Defendants)

34. The Six Flags Defendants are liable for the negligence of their employees/agents because they did not use ordinary care in hiring, supervising, training, and retaining them and their supervisors, and the breach of the applicable standard of care by these agents/employees and their supervisors, as described above, proximately caused injuries to Plaintiffs.

Count V: In the Alternative, Ostensible Agency (against the Six Flags Defendants)

35. In the alternative, if the negligent agents/employees were not acting as employees and/or borrowed servants of the Six Flags Defendants, then the agents/employees were acting as the ostensible agents of the Six Flags Defendants at all relevant times. Specifically: 1) there was a reasonable belief that the agents/employees were the agents or employees of the Six Flags Defendants, 2) the belief was generated by the Six Flags Defendants' affirmatively holding out of the agents/employees as the Six Flags Defendants' agents or

employees, and 3) there was justifiable reliance on the Six Flags Defendants' representation of authority.

Count VI: Joint Enterprise (against the Six Flags Defendants)

36. Alternatively, the Six Flags Defendants are liable for the negligence of each other under a theory of joint enterprise because: 1) an express or implied agreement among the Six Flags Defendants existed, 2) a common purpose was to be carried out by the Six Flags Defendants, 3) a common pecuniary interest in that purpose existed among the Six Flags Defendants, and 4) an equal right to control the enterprise existed.

Count VII: Negligence (against all Defendants)

37. At all times relevant to this cause of action, Defendants, acting by and through their employees, agents and/or vice principals, had a duty to act reasonably and prudently in design, manufacture, promotion and/or distribution of the New Texas Giant's Hybrid Coaster Trains (the "Train") and other roller coaster trains similar to it. Defendants breached this duty, by and among other acts and/or omissions:

- a. by designing, manufacturing, distributing and/or promoting a Train that was known to be unreasonably dangerous to the occupants of the Train when involved in a foreseeable use;
- b. by designing, manufacturing, distributing and/or promoting a Train with unsafe passenger restraints which failed to protect an occupant in a foreseeable use;
- c. by failing to warn users of the Train's known dangers to an occupant of this and similar trains;
- d. by failing to warn users of the Train's known dangers to an occupant using this sort of passenger restraint system;
- e. by designing, manufacturing, distributing and/or promoting a Train with known defects in its passenger restraint system;
- f. by designing, manufacturing, distributing and/or promoting a Train without proper

passenger restraint equipment including, but not limited to lap belts, over-the-shoulder restraints, and/or a closed passenger compartment; and

- g. by failing to adequately test and/or inspect the design and manufacture of this and other similar trains.

38. The above referenced acts and/or omissions as well as other acts and omissions, each individually and/or cumulatively, were a proximate cause of the injuries sustained by Ms. Esparza and Plaintiffs.

Count VIII: Products Liability (against all Defendants)

39. Defendants, by and through their employees, agents, representatives and vice principals or the designers, manufacturers, distributors, promoters and/or sellers of the Train, at the time the Train was designed, manufactured, distributed, promoted and/or sold, was a defective product, unreasonably dangerous to potential customers and/or users in that the Train did not offer adequate restraint systems, harnesses, and/or warnings and was generally unsafe to occupy while riding the Texas Giant roller coaster. The Train in question was in substantially the same defective condition on July 19, 2013, as it was when it was placed in the stream of commerce by the Defendants.
40. The defective condition of the Train and/or the failure of the Defendants to warn of this condition, rendered the Train unreasonably dangerous and was the producing cause of the injuries to Rosa Esparza and Plaintiffs.
41. There were safer alternative designs that were both economically and technologically feasible that would have prevented, or at least, minimized the risk of injury to Ms. Esparza and Plaintiffs.

PERSONAL INJURIES AND DAMAGES

Survival Damages for Rosa Esparza

42. As a result of Defendants' actions, Rosa Esparza, deceased, sustained severe personal injuries, mental anguish and physical pain prior to her death. Her estate is entitled to recover for her damages, including but not limited to, damages for mental anguish, physical injuries, pain and necessary funeral bills and expenses, for which damages are sought under the Texas Survival Statute, codified in Chapter 71 of the Texas Civil Practice & Remedies Code.

Wrongful Death Damages of Antonio Esparza, Amado Esparza, Antonio Esparza, Jr., Arnoldo Esparza, and Aracely Esparza Segovia

43. As a result of Defendants' actions and the death of Rosa Esparza, Plaintiffs Antonio Esparza (husband), Amado Esparza (son), Antonio Esparza, Jr. (son), Arnoldo Esparza (son), and Aracely Esparza Segovia (daughter) have suffered damages in the past and will suffer damages in the future, including but not limited to, mental anguish, loss of consortium, grief, bereavement, loss of future financial contributions, loss of services, loss of advice, care and counsel, loss of society and companionship, and medical, funeral and burial expenses, for which damages are sought under the Texas Wrongful Death Act, codified in Chapter 71 of the Texas Civil Practice & Remedies Code.

Bystander Damages for Plaintiffs Aracely Esparza Segovia and Ronal Segovia

44. Plaintiffs Aracely Esparza Segovia (daughter), and Ronal Segovia (son-in-law) are entitled to bystander damages.
45. Plaintiffs will continue to suffer from these injuries for the rest of Plaintiffs' lives, and seek compensation for such future damages.

CONDITIONS PRECEDENT

46. All conditions precedent to Plaintiffs' right to recover the relief sought herein have

occurred or have been performed.

RELIEF SOUGHT

47. Plaintiffs request that Defendants be cited to appear and answer, and that this case be tried, after which Plaintiffs recover:

1. Judgment against Defendants for a sum within the jurisdictional limits of this Court for the damages indicated above;
2. Pre-judgment and post-judgment interest at the maximum amount allowed by law;
3. Costs of suit; and
4. Such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

**THE LAW OFFICES OF
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/s/ Chip Brooker

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing instrument was served upon all counsel of record via electronic filing and service as prescribed by the Texas Rules of Civil Procedure on this 12th day of November, 2014

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