

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

DAVID MORGAN and KIRA VAUGHAN

CIVIL ACTION NO.: _____

Complainants

Versus

JUDGE _____

STORK CRAFT MANUFACTURING (USA) INC.

MAGISTRATE JUDGE _____

Defendant

COMPLAINT

NOW INTO COURT, through undersigned counsel, come Complainants, DAVID MORGAN and KIRA VAUGHAN, for the purposes of filing a complaint against STORK CRAFT MANUFACTURING (USA) INC.:

GENERAL ALLEGATIONS

1. This is an action to recover damages for personal injuries suffered by Complainants as a direct and proximate result of the Defendant Stork Craft Manufacturing (USA) Inc.'s (hereinafter referred to alternatively as "Defendant" or "Stork Craft"), negligent and wrongful conduct in connection with the design, development, manufacture, testing, packaging, advertising, promoting, marketing, distribution, labeling, and/or sale of Stork Craft drop-side cribs (hereinafter referred to as "the subject" or "Stork Craft drop-side cribs").

2. At all times material hereto, Stork Craft drop-side cribs were designed, developed, manufactured, tested, packaged, advertised, promoted, marketed, distributed, labeled, and/or sold by the Defendant herein.

PARTIES, JURISDICTION AND VENUE

3. Complainants are and were at all times hereinafter mentioned residents of the State of Louisiana and reside in the Parish of Iberia.
4. Upon information and belief, that at all times hereinafter mentioned, Defendant Stork Craft was and still is a domestic corporation duly organized and existing by virtue of the laws of the State of Nevada.
5. Upon information and belief, at all relevant times, Stork Craft was present and doing business in the State of Louisiana and in the Western District of Louisiana in particular.
6. At all relevant times, Stork Craft transacted, solicited, and conducted business in the State of Louisiana, and in particular, in the Western District of Louisiana and derived substantial revenue from such business.
7. At all times relevant hereto, Stork Craft was engaged in the business of designing, developing, manufacturing, testing, packaging, advertising, promoting, marketing, distributing, labeling, and/or selling the subject product.
8. Stork Craft placed the offending product into the stream of commerce causing it to be sold in the Western District of Louisiana where the resulting harm and damage was suffered by the Complainants.

9. At all relevant times, Stork Craft expected or should have expected that its acts would have consequences within the United States, and in the Western District of Louisiana, in particular.
10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332.
11. Venue is proper in this judicial district because the Defendant is doing business in this judicial district.
12. The amount in controversy exceeds the sum or value for diversity jurisdiction.
13. Stork Craft placed the subject product into the stream of interstate and worldwide commerce.
14. As a direct and proximate result of the Defendant placing the subject product into the stream of commerce, Complainants have suffered the injuries and damages described herein.

FACTUAL ALLEGATIONS

15. Defendant designed, developed, manufactured, tested, packaged, advertised, promoted, marketed, distributed, labeled, and/or sold the drop-side crib product known as Stork Craft full-size crib bearing model name Heather Stages Crib-Honey, model number 04588-478, manufacturing date: November 2005, manufacturing name and address: Stork Craft Manufacturing, Inc., 11511 #5 Road, Richmond, BC, Canada, V7A4E8. This product was widely marketed and distributed as an over-the-counter consumer product throughout the State of Louisiana.
16. The involved product, a full-size crib constructed of wood, was purchased new from a local national retail chain store in New Iberia, Louisiana between January and May of 2006.

17. The involved crib was designed to be assembled into four separate configurations: A full-size crib, a toddler bed, a daybed, and a full-size bed.
18. Plastic pieces allowing the drop-side rail to be dropped and for the drop-side rail to be locked into place were already affixed to the drop-side rail and did not require assembly.
19. During the course of the use of the product in question by Complainant's eldest son, the drop-side feature was never utilized.
20. In December of 2008, the involved crib was used for the decedent, REESE MORGAN, who was at that time approximately 7 months old.
21. Complainant, DAVID MORGAN, is the decedent's father.
22. Complainant, KIRA VAUGHAN, is the decedent's mother.
23. On the eve of May 25, 2009, Complainants, DAVID MORGAN, and KIRA VAUGHAN, put the infant, REESE MORGAN, down for the night at approximately 9:30 p.m.
24. At approximately 8:00 a.m. of May 26, 2009, the decedent, REESE MORGAN, was found by Complainant, KIRA VAUGHAN, wedged between the mattress and the drop-side rail with his face pressed against the mattress and the drop-side rail pressed against the back of his head. The decedent's torso and legs were hanging between the drop-side rail.
25. The gap the decedent was entrapped in was created when the lower right claw disengaged from the lower right t-rail of the crib.
26. At all times relevant herein, Complainants were unaware of the serious defects and dangerous properties of the subject product as set forth herein.
27. Had the Defendant properly disclosed the risks associated with the subject product, Complainants would not have used it.

28. As alleged herein, as a direct and proximate result of the Defendant's negligence and other wrongful conduct, and the unreasonable dangerous and defective characteristics of the subject product, REESE MORGAN, experienced conscious pain and suffering, suffered immensely, suffocated and died.
29. Complainants, KIRA VAUGHAN, mother of the deceased, and DAVID MORGAN, father of the deceased, have suffered the wrongful death of their child.
30. Complainants seek damages from Defendant, as described herein.

FIRST CAUSE OF ACTION -CONSTRUCTION OR COMPOSITION
DEFECT UNDER LA. R.S. 9:2800.55

31. Complainants repeat, reiterate and re-allege each and every allegation of this Complaint contained in the paragraphs above, with the same force and effect as if fully set forth herein.
32. Defendant designed, developed, manufactured, tested, packaged, advertised, promoted, marketed, distributed, labeled, and/or sold the subject product in a condition which rendered it unreasonably dangerous due to its propensity to cause serious injury and/or death.
33. The subject product was unreasonably dangerous in construction or composition as provided in La.R.S.9:2800.55.
34. Upon information and belief, the subject product manufactured and/or supplied by Defendant was defective in construction or composition in that, when it left the hands of Defendant, it deviated in a material way from Defendant's manufacturing performance standards and/or it differed from otherwise identical products manufactured to the same design formula. In particular, and for example, the crib's drop-side rail can detach, creating

a gap between the mattress and rail in such a way that a child can become trapped and suffer serious injury or death.

35. As a direct and proximate result of the use of the subject product as manufactured, designed, sold, supplied and introduced into the stream of commerce by Defendant, Complainants suffered harm, damages, wrongful death and economic loss as previously described and will continue to suffer such harm, damages and economic loss in the future.

SECOND CAUSE OF ACTION -DESIGN DEFECT UNDER LA. R.S. 9:2800.56

36. Complainants repeat, reiterate and re-allege each and every allegation of this Complaint contained in the paragraphs above, with the same force and effect as if fully set forth herein.
37. Defendant is the manufacturer, designer, distributor, seller, or supplier of the subject product.
38. Upon information and belief, the subject product manufactured and supplied by Defendant was defective in design or formulation in that, when it left the hands of the Defendant, the foreseeable risk of the product exceeded the benefits associated with its design or formulation, or it was more dangerous than an ordinary consumer would expect. In particular, and for example, the crib's drop-side rail can detach, creating a gap between the mattress and rail in such a way that a child can become trapped and suffer serious injury or death. The subject product was unreasonably dangerous in design as provided by La.R.S. 9:2800.56.
39. The foreseeable risks associated with the design or formulation of the subject product includes, but are not limited to, the fact that the design or formulation is more dangerous

than a reasonably prudent consumer would expect when used in an intended or reasonably foreseeable manner.

40. As a direct and proximate result of the use of the subject product as manufactured, designed, sold, supplied and introduced into the stream of commerce by Defendant, Complainants suffered harm, damages, wrongful death and economic loss as previously described and will continue to suffer such harm, damages and economic loss in the future.

THIRD CAUSE OF ACTION -INADEQUATE WARNING UNDER LA. R.S. 9:2800.57

41. Complainants repeat, reiterate and re-allege each and every allegation of this Complaint contained in the paragraphs above, with the same force and effect as if fully set forth herein.
42. The subject product manufactured and supplied by Defendant was defective due to inadequate warning or instruction. Defendant knew or should have known, that the product created significant risks of serious bodily harm to consumers and Defendant failed to adequately warn consumers. The subject product was unreasonably dangerous because an adequate warning and/or instruction was not provided pursuant to La.R.S. 9:2800.57.
43. The subject product manufactured and supplied by Defendant was defective due to inadequate post-marketing warning or instruction because, after Defendant knew or should have known of the risk of serious bodily harm from the use of the subject product, Defendant failed to provide an adequate warning and/or instruction to consumers of the defects of the product, and/or alternatively failed to properly label, warn and instruct, or recall, while knowing that the product could cause serious injury. Particularly, but not exclusively, Defendant failed to adequately warn and/or instruct consumers that the

drop-side rail can be installed upside down, which can result in broken or disengaged plastic parts, resulting in serious harm or death.

44. As a direct and proximate result of the use of the subject product as manufactured, designed, sold, supplied and introduced into the stream of commerce by Defendant, Complainants suffered harm, damages, wrongful death and economic loss as previously described and will continue to suffer such harm, damages and economic loss in the future.

FOURTH CAUSE OF ACTION -BREACH OF EXPRESS WARRANTY
UNDER LA. R.S. 9:2800.58

45. Complainants repeat, reiterate and re-allege each and every allegation of this Complaint contained in the paragraphs above, with the same force and effect as if fully set forth herein.
46. Upon information and belief, Defendant expressly warranted to Complainants that the subject product was safe and fit for use by consumers and users for its intended purpose, that it was of merchantable quality, that it did not produce any dangerous side effects, and that it was adequately tested and fit for its intended use.
47. Upon information and belief, at the time of the making of the express warranties, Defendant knew or should have known of the purpose for which the subject product was to be used and warranted the same to be, in all respects, fit, safe, and effective and proper for such purpose. The subject product was unreasonably dangerous because it failed to conform to an expressed warranty of the defendant as provided by La.R.S. 9:2800.58.
48. Upon information and belief, at the time of the making of the express warranties, Defendant knew or should have known that, in fact, said representations and warranties

were false, misleading, and untrue in that the subject product was not safe and fit for its intended use and, in fact, produces serious injuries to the user.

49. Complainants purchased and used the subject product for its intended purpose.
50. Upon information and belief, Defendant breached said express warranties in that the subject product was not safe and fit for its intended use. In particular, and for example, the crib's drop-side rail can detach, creating a gap between the mattress and rail in such a way that a child can become trapped and suffer serious injury or death.
51. As a direct and proximate result of Defendant's breach of express warranty, Complainants suffered harm, damages, wrongful death and economic loss as previously described and will continue to suffer such harm, damages and economic loss in the future. They have suffered and will continue to suffer economic loss, and have otherwise been physically, emotionally and economically injured.

FIFTH CAUSE OF ACTION -REDHIBITION

52. Complainants repeat, reiterate and re-allege each and every allegation of this Complaint contained in the paragraphs above, with the same force and effect as if fully set forth herein.
53. The subject product contains a vice or defect which renders it useless or its use so dangerous that buyers would not have purchased it had they been aware of the vice or defect.
54. Defendant sold or promoted the subject product, which Defendant placed into the stream of commerce. The subject product sold or promoted by the Defendant, possesses a redhibitory defect because it was not manufactured and marketed in accordance with industry

standards and/or is unreasonably dangerous, as described above, which renders the subject product useless or so inconvenient that it must be presumed that a buyer would not have bought the subject product had he known of the defect. Pursuant to La. C.C. art. 2520, the Complainants are entitled to obtain a rescission of the sale of the subject product along with attorneys fees and costs.

55. Upon information and belief, Defendant had knowledge of the defect and thus is liable to Complainants for the price of the subject product, with interest from the purchase date, as well as reasonable expenses occasioned by the sale of the subject product, and attorneys' fees. As the manufacturer of the subject product, under Louisiana law, Defendant is deemed to know that the subject product possessed a redhibitory defect. La. C.C. art. 2545.

SIXTH CAUSE OF ACTION – WRONGFUL DEATH and SURVIVAL ACTION

56. Complainants repeat, reiterate and re-allege each and every allegation of this Complaint contained in the paragraphs above, with the same force and effect as if fully set forth herein.
57. Due to the fault, negligence and/or strict liability of Defendant, REESE MORGAN suffered damages, including, but not limited to the following:
- a. A wrongful, tragic and untimely death; and
 - b. Conscious pain and suffering prior to death.
58. Complainants assert all Louisiana survival action and wrongful death actions and make claims for all associated recoverable damages.

59. Complainants make demand upon Defendant for all damages, including, but not limited to those that are reasonable under the premises to include, but not limited to, the following, among other past, present and future damages:

- a. Reese Morgan's conscious pain and suffering prior to death;
- b. The tragic, untimely and wrongful death of Reese Morgan;
- c. Funeral expenses;
- d. Loss of care, comfort and companionship;
- e. Grief and mental anxiety, bereavement, loss of companionship;
- f. Loss of consortium, society, love, affection, care, attention, companionship, comfort and protection;
- g. Pecuniary loss and damages;
- h. Non-pecuniary loss and damages;
- i. Pain and suffering;
- j. Loss of enjoyment of life;
- k. Medical expenses;
- l. Survival action damages;
- m. Wrongful death damages;
- n. Interest;
- o. Cost; and
- p. Attorneys fees.

PRAYER FOR RELIEF

WHEREFORE, Complainants, DAVID MORGAN and KIRA VAUGHAN, individually and on behalf of their deceased minor child, REESE MORGAN, demand judgment against Defendant STORK CRAFT MANUFACTURING (USA) INC. on all Causes of Action herein for such damages as are reasonable in the premises, together with the maximum legal interest, and for all costs as follows:

- a. Awarding damages to the Complainants, incidental to Complainants DAVID MORGAN and KIRA VAUGHAN's purchase and use of Stork Craft Stork Craft drop-side cribs, in an amount to be determined at trial;
- b. Awarding damages to the Complainants, DAVID MORGAN and KIRA VAUGHAN for all damages described herein;
- c. Awarding pre-judgment and post-judgment interest to the Complainants;
- d. Awarding the costs and the expenses of this litigation to the Complainants;
- e. Awarding reasonable attorneys' fees and costs to the Complainants as provided by law;
- f. Awarding interest on such award of attorneys' fees and costs;
- g. Granting all such other relief as the Court deems necessary, just and proper; and

h. Trial by jury.

Respectfully submitted,

NEBLETT, BEARD & ARSENAULT

By:  _____

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