

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

Civil Action No.

JASON MATTHEW PHILLIPS, an individual,

Plaintiff,

**JURY TRIAL DEMANDED**

v.

BGHA, INC. d/b/a Big Game Treestands., a  
Minnesota Corporation,

Defendant.

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**COMPLAINT**

Plaintiff above-named, by and through his undersigned counsel, hereby submits the following Complaint and Demand for Jury Trial against the above-named Defendant, and alleges the following upon personal knowledge and belief, and investigation of counsel:

**NATURE OF THE ACTION**

1. This is a subject treestands liability action seeking recovery for personal injuries and damages suffered by **Plaintiff Jason Matthew Phillips** (hereafter referred to as “Plaintiff”), after Plaintiff purchased and used a Big Game Tree Stand (Cobalt) Model No, CL100-A, Batch No. 9B-0214 (“subject treestand”) designed, manufactured, produced, tested, studied, inspected, labeled, marketed, advertised, promoted, distributed and sold by **BGHA, Inc. d/b/a Big Game Treestands** (hereafter referred to as “BGHA” or “Defendant”).

2. On or about October 20, 2015, the Consumer Products Safety Commission (“CPSC”) issued a recall involving three models of Big Game treestands, which included the subject tree stand, due to “[t]he cable assembly on the climbing tree stand can release, posing a fall hazard to

the user.” A copy of the Recall Notice is attached hereto as Exhibit A and incorporated by reference.

3. In or around 2015, Plaintiff purchased the the subject treestand from Simmons Sporting Goods in Bessemer, Alabama.

4. On or about November 21, 2020 Plaintiff was using the subject treestand consistent with its intended purpose of hunting. As Plaintiff was ascending the tree in the stand, the cable assembly of the subject treestand ‘released’, causing him to fall approximately 20 to 23 feet to the ground.

5. As a direct and proximate result of the Defendant’s conduct, the Plaintiff in this case has incurred permanent bodily injuries, physical pain, mental anguish, lost wages, diminished enjoyment of life, and other damages.

#### **PARTIES, JURISDICTION & VENUE**

6. Plaintiff is an adult resident of the City of Bessemer, County of Jefferson, State of Alabama, and is resident and citizen of the State of Alabama for the purposes of diversity prescribed by 8 U.S.C. § 1332.

7. BGHA is a Minnesota company, which has its principal place of business at 1905 1st Ave N Windom, Minnesota 56101 and is a resident and citizen of the State of Minnesota for the purposes of diversity prescribed by 28 U.S.C. § 1332

8. Jurisdiction is proper pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and there is complete diversity between the parties.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to this claim occurred in this district.

10. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391 because the Defendant is a resident and citizen of this district.

### **FACTUAL BACKGROUND**

11. In or around 2015, Plaintiff purchased the subject treestand from Simmons Sporting Goods in Bessemer, Alabama.

12. On or about November 21, 2020 Plaintiff was using the subject treestand consistent with its intended purpose of hunting. As Plaintiff was ascending the tree in the stand, the cable assembly of the subject treestand snapped, causing him to fall approximately 20 to 23 feet to the ground.

13. During the aforementioned events of the Plaintiff utilizing and relying on the subject treestand, the subject treestand was defective to the extent that (1) the wire cable snapped in half; and (2) nothing provided by the manufacturer, distributor and/or seller of the subject treestand, including but not limited to the labeling on the subject treestand, the packaging, and the instruction manual for the subject treestand properly and adequately informed and/or warned the Plaintiff, or any other consumer and end user of the subject treestand of the dangerous cable assemblies causing a fall hazardous condition.

14. On or about October 20, 2015, the Consumer Products Safety Commission (“CPSC”) issued a recall involving three models of Big Game treestands, which included the subject tree stand, due to “[t]he cable assembly on the climbing tree stand can release, posing a fall hazard to the user.” *See* Exhibit A.

15. Economic, safer alternative designs were available that could have prevented the subject treestand’s cable assembly from snapping or ‘releasing’,

16. At all times material hereto, the Defendant acted through its duly authorized agents, servants, workmen, and employees, who acted in the scope of their employment and in furtherance of its business.

17. The Defendant had actual and/or constructive notice of the existence of the aforementioned dangerous and/or defective conditions of the subject treestand prior to its purchase in 2015.

18. The Defendant knew or should have known that individuals would use the subject treestand for its intended purpose and said individuals would be unaware of the aforementioned dangerous and/or defective conditions of the subject treestand.

19. Consequently, the Plaintiff seeks damages resulting from the use of the subject treestand as described above, which has caused the Plaintiff to suffer from serious bodily injuries, medical expenses, lost wages physical pain, mental anguish, diminished enjoyment of life, and other damages.

### **SPECIFIC COUNTS**

#### **FIRST CLAIM FOR RELIEF** **STRICT SUBJECT TREESTANDS LIABILITY**

20. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth herein, and further alleges:

21. The subject treestand was defective and unsafe when it left the control of BGHA in that said subject treestand was not safe for its reasonably foreseeable uses in that it subjected the Plaintiff to serious injuries when the Subject treestand was utilized for its intended manner.

22. The subject treestand was defective to the extent that (1) the wire cable snapped in half; and (2) nothing provided by the manufacturer, distributor and/or seller of the subject treestand, including but not limited to the labeling on the subject treestand, the packaging, and the instruction

manual for the subject treestand properly and adequately informed and/or warned the Plaintiff or any other consumer and end user of the subject treestand of the dangerous cable assemblies causing a fall hazardous condition.

23. Defendants' actions and omissions were the direct and proximate cause of the Plaintiff's injuries and damages.

**WHEREFORE**, Plaintiff demands judgment against Defendant for damages, together with interest, costs of suit, and all such other relief as the Court deems proper.

**SECOND CLAIM FOR RELIEF**  
**NEGLIGENCE**

24. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth herein, and further alleges:

25. Defendants had a duty of reasonable care to design, manufacture, market, and sell non-defective treestands that are reasonably safe for their intended uses by consumers, such as Plaintiff.

26. Defendant failed to exercise ordinary care in the manufacture, sale, warnings, quality assurance, quality control, distribution, advertising, promotion, sale and marketing of its tree stands, including the subject tree stand, in that Defendant knew or should have known that said treestands created a high risk of unreasonable harm to the Plaintiff and consumers alike.

27. The injuries sustained by the Plaintiff were caused by the carelessness and negligence of the Defendant in that it:

- a. Failed to furnish the Subject treestand with adequate or proper warnings of the danger of said cables;
- b. Failed to properly design the Subject treestand in order to avoid the injuries described above;

- c. Failed to adequately assemble and/or fabricate the Subject treestand in order to provide a safe Subject treestand;
- d. Failed to properly and/or adequately manufacture the Subject treestand in order to provide a safe Subject treestand;
- e. Failed to provide adequate warnings, cautions, directions, and/or instructions concerning the dangers and limitations of the Subject treestand;
- f. Failed to properly and/or adequately design, fabricate, manufacture, test, sell, label and/or supply the Subject treestand in a safe condition;
- g. Failed to adequately and/or properly test and/or inspect the Subject treestand in order to provide a safe Subject treestand;
- h. Failed to provide, establish, and/or follow proper and/or adequate quality control methods in the manufacture and/or resale of the Subject treestand so as to provide a safe Subject treestand;
- i. Failed to disclose to users, including the Plaintiff, that the Subject treestand was defectively and/or unreasonably designed, thereby making it dangerous to use;
- j. Failed to properly and/or adequately mark the Subject treestand so that users, including the Plaintiff would be aware of the dangers of the Subject treestand;
- k. Failed to adequately, properly, and/or completely supervise its personnel on the manufacture, assembly, and/or resale of the Subject treestand;
- l. Failed to properly and/or adequately test or inspect the Subject treestand in order to insure its proper working;
- m. Failed to prepare and sell the Subject treestand with the standard of diligence and precaution;

- n. Allowed and permitted the defect to exist in the Subject treestand when a proper inspection or examination would have disclosed its presence;
- o. Failed to inspect the aforementioned Subject treestand to determine whether it could be used without injuring the user;
- p. Failed to manufacture, produce, distribute, and/or sell the Subject treestand in a proper and a safe condition;
- q. Failed to manufacture and/or supply the Subject treestand that was safe for its intended use;
- r. Failed to implement adequate and properly quality control and inspection procedures; and
- s. Was otherwise negligent

**WHEREFORE**, Plaintiff demands judgment against Defendant for damages, together with interest, costs of suit, and all such other relief as the Court deems proper.

**THIRD CLAIM FOR RELIEF**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

28. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth herein, and further alleges:

29. Defendant breached the implied warranty of merchantability, as the subject treestand was not safe or of merchantable quality due to an unreasonably dangerous propensity of its wire cable to release or break. As such, the subject treestand was not of the same quality as those other treestands generally acceptable in the trade.

30. Defendants designed, manufactured, marketed, and sold the subject treestand with an implied warranty that it was of merchantable quality.

31. The average consumer, including the Plaintiff, would not reasonably anticipate the dangerous and harmful condition of the subject treestand or the injuries caused by reasonable and foreseeable use.

32. Members of the consuming public, including the Plaintiff, were the intended third-party beneficiaries of the warranty.

33. Plaintiff relied on Defendant's expertise, knowledge, skill, judgment and implied warranty in choosing to purchase the subject treestand.

34. Defendant knew or should have known of the dangerous propensities of the subject treestand at the time it was sold.

35. Defendants breach of the implied warranty of merchantability was the proximate cause of, directly resulted in, and/or substantially contributed to the injuries sustained by the Plaintiff and his resulting damages, for which Defendant is liable.

**WHEREFORE**, Plaintiff demands judgment against Defendant for damages, together with interest, costs of suit, and all such other relief as the Court deems proper.

**FORUTH CLAIM FOR RELIEF**  
**BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**

36. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth herein, and further alleges:

37. Defendants breached the implied warranty of fitness for a particular use, as the subject treestand was not safe or fit for the particular purpose in which it was intended to be used due to an unreasonably dangerous propensity of its wire cable to release or break.

38. Defendant designed, manufactured, marketed, and sold the subject treestand with an implied warranty that it was fit for the particular purpose of being used for hunting.



39. The average consumer, including the Plaintiff, would not reasonably anticipate the dangerous and harmful condition of the subject treestand or the injuries caused by reasonable and foreseeable use.

40. Members of the consuming public, including the Plaintiff, were the intended third-party beneficiaries of the warranty.

41. Defendants or should have known of the dangerous propensities of the subject treestand at the time it was sold.

42. The subject treestand was not safe or fit for the particular purpose in which it was intended to be used for.

43. Defendant's breach of implied warranty of fitness for a particular use was the proximate cause of, directly resulted in, and/or substantially contributed to the injuries sustained by the Plaintiff and his resulting damages, for which the Defendant is liable.

**WHEREFORE**, Plaintiff demands judgment against Defendant for damages, together with interest, costs of suit, and all such other relief as the Court deems proper.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands judgment against the Defendant for damages, to which he is entitled by law, as well as all costs of this action and interest, to the full extent of the law, whether arising under the common law and/or statutory law, including:

- a. judgment for Plaintiff and against Defendant;
- b. damages to compensate Plaintiff for his injuries, economic losses and pain and suffering sustained as a result of the use of the Defendant's treestand;
- c. pre and post judgment interest at the lawful rate;
- d. a trial by jury on all issues of the case; and
- e. for any other relief as this Court may deem equitable and just, or that may be available under the law of another forum to the extent the law of another forum is

applied, including but not limited to all reliefs prayed for in this Complaint and in the foregoing Prayer for Relief.

Respectfully submitted,

**JOHNSON BECKER, PLLC**

Dated: 11/03/2022

*/s/ Adam J. Kress, Esq.*

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