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COMMONWEALTH OF MASSACHUSETTS

DUKES, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2011-00008A

DOMINGO PAGAN

vs.

FABRICIO ABDALA & others[1]

MEMORANDUM OF DECISION AND ORDER ON DEFENDANT PROFESSIONAL DISC GOLF ASSOCIATION, INC.'S MOTION FOR SUMMARY JUDGMENT, DEFENDANT CHAMPION DISCS, INC.'S MOTION FOR SUMMARY JUDGMENT, DEFENDANT LAZY FROG, INC.'S MOTION FOR SUMMARY JUDGMENT, AND DEFENDANT MARK JACOB GIFFORD'S MOTION FOR SUMMARY JUDGMENT

The plaintiff, Domingo Pagan ("the plaintiff"), was struck in the eye by a disc golf disc thrown by defendant Fabricio Abdala ("Abdala") on the Martha's Vineyard Riverhead Disc Golf Course ("the course"), which is located in the Manuel F. Correllus State Forest ("the State Forest"). The plaintiff brings claims against, *inter alia*, Abdala, the Professional Disc Golf Association ("PDGA"), Champion Disc, Inc. d/b/a Innova Champion Discs, Inc. ("Champion"), the Lazy Frog, Inc. ("the Lazy Frog"), and Mark Jacob Gifford ("Gifford"), who is the owner of the Lazy Frog and the president of the Martha's Vineyard Riverhead Disc Golf Course Club ("the club").[2] The plaintiff brings claims for negligence (Count I), gross negligence (Count II), products liability (Count III), breach of warranty (Count IV), and premises liability (Count V).[3]

The case is now before the court on motions for summary judgment brought individually by the PDGA, Champion, the Lazy Frog, and Gifford. For the following reasons, the PDGA's

[1] Eric Brown, Mark Jacob Gifford, Jr., Daryl K. Kaeka and Does 1-100, Individually, and as Members and Officers of the Martha's Vineyard Riverhead Disc Golf Course Committee, Lazy Frog, Inc., the New England Flying Disc Association, Inc., Professional Disc Golf Association, Inc., Champion Discs, Inc. d/b/a Innova Champion Discs, Inc., the Massachusetts Department of Conservation and Recreation, and the Commonwealth of Massachusetts. It appears that some of these parties have settled with the plaintiff.

[2] The club is also referred to as the Martha's Vineyard Disc Golf Course Commission.

[3] The plaintiff also brought a claim under the Mass Tort Claims Act pursuant to G. L. c. 258, § 4, which is not relevant to the instant motions.

motion for summary judgment is **ALLOWED**; Champion's motion for summary judgment is **ALLOWED IN PART** and **DENIED IN PART**; Lazy Frog's motion for summary judgment is **ALLOWED IN PART** and **DENIED IN PART**; and Gifford's motion for summary judgment is **ALLOWED IN PART** and **DENIED IN PART**.

BACKGROUND

The following facts, which appear to be undisputed, are common to all four motions. Additional facts are discussed with their respective motions.

On July 12, 2010, the plaintiff went to the State Forest to exercise. He arrived around 2:00 pm and jogged eight to ten miles. After his jog, the plaintiff walked towards a road or path. As he walked along this road or path, he spotted a person playing disc golf, later determined to be Abdala.[4] He had walked about fifty feet when he was struck in the head with a disc golf disc thrown by Abdala from three hundred feet away. The disc sliced through his eyeglasses and into his left eye. The plaintiff lost the eye. At the time of his injury, only the plaintiff and Abdala were present on the disc golf course. The parties dispute whether the disc was white or green in color, but appear to agree that it was an "Innova Boss" disc manufactured by Champion.

I. PGDA's Motion for Summary Judgment

The PDGA is a 501(c)(6) non-profit membership association dedicated to the promotion of the sport of disc golf. To promote the sport of disc golf, the PDGA sanctions events, presents educational programs, writes the rules for the sport, and approves disc golf discs for use in PDGA-sanctioned events. The PDGA does not build, inspect, certify, or approve disc golf courses. The PDGA had no part in the construction or design of the course and did not at any time exercise any control or influence over the course.

[4] The sport of disc golf is modeled on the game of golf, but instead of using clubs to knock a ball into a hole, the players throw discs towards a basket suspended above the ground.

The PDGA Technical Standards Committee is responsible for testing equipment submitted to the PGDA for approval and certification. The PDGA asserts that the Technical Standards Committee only "approves" or "certifies" discs for use in PDGA sanctioned tournaments or competitions in order to ensure each competitor is on an equal footing, not to ascertain a disc's safety. After a disc is approved, the PDGA permits the manufacturer to stamp "PDGA approved" on the disc.

The plaintiff asserts that the PDGA contracts with manufacturers to test disc safety. As evidence of this contractual arrangement, the plaintiff asserts that the PDGA receives a $300.00 application fee from the manufacturer for each disc that a manufacturer submits for approval. The plaintiff further asserts that the technical specifications set forth by the PDGA dictate disc designs, weight, and plastic formulations that Champion and other manufacturers use to sell discs to the public. Finally, the plaintiff argues that the PDGA issues a document entitled Guidelines and Procedures for Manufacturers to Certify that Equipment Complies with PDGA Technical Standards 2000-2013 ("Guidelines"), in which "PDGA approved" is defined to mean, in part, that the approved discs "present no unreasonable and no unusual danger to players or spectators." The plaintiff admits that in December 2007, the PDGA revised the Guidelines and removed the language about danger to players or spectators. The Innova Boss disc that allegedly injured the plaintiff in this case was approved by the PDGA nine months after the language about safety was removed.[5] The plaintiff does not cite any contractual language or terms apart from the language in the pre-2007 Guidelines that discs "present no unreasonable and no unusual danger to players or spectators." It is undisputed that the PDGA has never actually performed any safety tests on any discs.

[5] The plaintiff challenges this timeline in his brief, but he admits to it in the statement of undisputed material facts.

II. Champion Discs' Motion for Summary Judgment

The president of Champion, David Dunipace, invented the golf disc with a triangular rim with a smaller radius than a Frisbee. He assigned his patent to Champion in the 1980's, and Champion has manufactured discs since that time. Champion makes different models of discs for different uses within disc golf. New disc models are based on modifications of existing discs. To test its products, Champion throws the discs to evaluate their flight characteristics. The discs are then submitted to the PDGA for certification. There are no warnings or instructions on Champion's golf discs. Apart from the standards set forth by the PDGA, there are no voluntary or legal standards governing discs. Apart from the instant suit, Champion has never been involved in litigation involving claims for bodily injury due to negligence or breach of warranty. Champion has never recalled its products.

The parties dispute whether the PDGA certification for the Innova Boss disc covers all models of the Boss disc, or whether there is one certification for a Boss disc, after which the shape of the disc may change slightly. Champion has submitted approximately eighty discs to the PDGA for certification, and none have been rejected.

III. The Lazy Frog's Motion for Summary Judgment

The Lazy Frog is a corporation with a retail store location in Oak Bluffs, Massachusetts. The Lazy Frog sells many different types of sporting goods, including disc golf equipment. It sells the Innova Boss disc, the type of disc that allegedly injured the plaintiff. Abdala testified in his deposition that he did not know where he bought the disc that injured plaintiff, but that he had bought discs from the Lazy Frog in the past.

The Lazy Frog sells the discs exactly as they come from the manufacturer, which may or may not include packaging or warnings. The Lazy Frog gives oral warnings to customers

purchasing discs that the discs are made for disc golf, not for throwing and catching. The Lazy Frog does not provide written warnings with the Champion Innova Boss discs it sells.

The Lazy Frog sells non-golf discs, such as the Wham-O Frisbee. The Lazy Frog frequently refers to disc golf as "Frisbee golf" and refers to the discs as "Frisbees." While a Frisbee can be considered either a toy or a piece of sporting equipment, discs are not toys and are strictly sporting equipment. An Innova Boss disc weighs more than a Frisbee and has a sharper edge that comes to more of a point.

The Lazy Frog asserts that it had no role in any expansion of or maintenance for the course, and that the course was designed and constructed before the Lazy Frog was incorporated. The plaintiff argues that the individual who initially proposed the course approached the Commonwealth in 1999 or 2000. The Commonwealth's Forest Supervisor approved the location of the course. The plaintiff asserts that construction and expansion of the course continued through 2009, with the involvement of the Lazy Frog. The plaintiff does not describe the Lazy Frog's involvement, however. The Lazy Frog advertises on a course basket, which the plaintiff asserts is visible from the parking area. The plaintiff admits, however, that all of the baskets were donated by businesses or individuals, and therefore contain advertising or business information.

IV. Gifford's Motion for Summary Judgment

The club is an unincorporated association of volunteers with no physical address and no elected officers. Rather, official titles are self-assigned by volunteers on an informal basis. Gifford is the president of the club as well as the owner of the Lazy Frog.

Gifford has raised money for the club, promoted tournaments at the course, accepted funds for the club, and has instructed people to send tournament checks to the Lazy Frog for

processing for the club. The Commonwealth issues an annual special use permit to the club to operate the course. Gifford's name appears on these permits.

The parties dispute when the course was constructed or designed, whether construction or renovations took place after Gifford became involved with the club, and how much the club did to design or renovate the course. The parties also dispute whether the Commonwealth is responsible for, and in fact provides, all course maintenance, or whether the club assists with maintenance.

The plaintiff asserts that the Lazy Frog sets up a booth on the course to sell discs and other disc golf equipment. The Lazy Frog also advertises on a course basket, as described above. The plaintiff asserts that the Lazy Frog and Gifford benefit financially from Gifford's role as a member of the club, but offers no specific evidence on financial matters in support of this assertion.

DISCUSSION

Summary judgment is appropriate where there is no genuine issue of material fact, and where, viewing the evidence in the light most favorable to the nonmoving party, the moving party is entitled to judgment as a matter of law. Opara v. Massachusetts Mut. Life Ins. Co., 441 Mass. 539, 544 (2004); Mass. R. Civ. P. 56(c). "The moving party has the burden of affirmatively demonstrating that the pleadings raise no genuine issue of fact on every material issue." Genesis Tech. & Fin., Inc. v. Cast Navigation, LLC, 74 Mass. App. Ct. 203, 206-207 (2009). The moving party need not present evidence or affidavits in support of its motion. See Mass. R. Civ. P. 56(b) ("A party against whom a claim . . . is asserted . . . may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof."). "If the moving party does show that there is no issue for trial, the opposing party

must respond and allege specific facts showing that there is a genuine and triable issue or the court will allow the motion." Genesis Tech. & Fin., Inc., 74 Mass. App. Ct. at 207. See also Mass. R. Civ. P. 56(f).

I. Claims against the PDGA

A. Rule 56(f)

The plaintiff argues that the PDGA's motion for summary judgment should be denied pursuant to Rule 56(f) because there is outstanding discovery. See Mass. R. Civ. P. 56(f) ("Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment . . . ."). The plaintiff has failed to file an affidavit to explain why he is unable to present facts essential to his opposition, however, and as such his request for relief under Rule 56(f) must be denied. See id; see also Brick Constr. Corp. v. CEI Dev. Corp., 46 Mass. App. Ct. 837, 840 (1999).

B. Negligence

The plaintiff argues that the PGDA undertook a contractual duty to implement safety requirements and as such is held to a duty of care. "[A] defendant under a contractual obligation 'is liable to third persons not parties to the contract who are foreseeably exposed to danger and injured as a result of its negligent failure to carry out that obligation.'" LeBlanc v. Logan Hilton J.V., 463 Mass. 316, 328 (2012), quoting Parent v. Stone & Webster Eng'g Corp., 408 Mass. 108, 113-114 (1990). "Although the duty arises out of the contract and is measured by its terms, negligence in the manner of performing that duty as distinguished from mere failure to perform it, causing damage, is a tort." Anderson v. Fox Hill Village Homeowners Corp., 424 Mass. 365,

368 (1997), quoting Abrams v. Factory Mut. Liab. Ins. Co., 298 Mass. 141, 144 (1937). See also LeBlanc, 463 Mass. at 328 (same).

Here, the plaintiff has not submitted any evidence showing a contract between Champion and the PDGA that required the PDGA to perform safety inspections. The plaintiff does not point to any contractual language or terms apart from the language in the pre-2007 Guidelines that the discs must "present no unreasonable and no unusual danger to players or spectators." This language was eliminated from the Guidelines before the disc that allegedly injured the plaintiff was submitted for approval. Apart from this language, there is no evidence that the PDGA approved discs for anything other than their use in PDGA tournaments. There is simply no evidence, in short, that PDGA has undertaken a broader contractual role to do safety inspections or to regulate disc safety in any way. Thus, summary judgment must enter against the plaintiff on this claim.

C. Gross Negligence, Products Liability, Breach of Warranty, and Premises Liability

The plaintiff has set forth no evidence that the PDGA manufactured or sold any discs, or had any involvement in or control over the design or maintenance of the disc golf course. There is likewise no evidence of gross negligence. See *infra* § II(B). Therefore, the plaintiff has failed to rebut the PDGA's showing that it is entitled to judgment as a matter of law on these claims. See Mass. R. Civ. P. 56(e) ("When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.").

II. Claims against Champion[6]

A. Negligence, Products Liability, and Breach of Warranty[7]

The plaintiff argues that Champion, as the manufacturer of the disc that allegedly injured plaintiff, failed to warn either the plaintiff or defendant Abdala about the risks of throwing the disc at someone, and that Champion negligently designed and sold a defective and unreasonably dangerous disc, considering the disc's weight and sharp edge.

"Under G. L. c. 106, § 2-314 (2) (c), of the Uniform Commercial Code, . . . a warranty that goods . . . are merchantable is implied in a contract for their sale, and goods are merchantable if they are fit for the ordinary purposes for which such goods are used." Evans v. Lorillard Tobacco Co., 465 Mass. 411, 422 (2013). "The 'ordinary purposes' contemplated by [G. L. c. 106, § 2-314 (2) (c)] include both those uses which the manufacturer intended and those which are reasonably foreseeable." Back v. Wickes Corp., 375 Mass. 633, 640 (1978) (brackets added). "Lack of privity between plaintiff and defendant shall be no defense in any action brought against the manufacturer . . .of goods to recover damages for breach of warranty, express or implied, or for negligence . . . ." G. L. c. 106, § 2-318. "[A] manufacturer must anticipate the environment in which its product will be used, and it must design against the reasonably foreseeable risks attending the product's use in that setting." Back, 375 Mass. at 640-641. "Even if a product is properly designed, it is unreasonably dangerous and, therefore, it is not fit for the purposes for which such goods are used, if foreseeable users are not adequately warned of dangers associated with its use." Evans, 465 Mass. at 439. "A product may be defective and

[6] As with the plaintiff's opposition to the PDGA's motion, the plaintiff's assertion that Champion's motion is premature is unavailing absent an affidavit pursuant to Mass. R. Civ. P. 56(f), which is not present here.

[7] Because these three claims have overlapping facts and elements, the court treats them together for the purposes of this motion. See Hoffman v. Houghton Chem. Corp., 434 Mass. 624, 637 (2001) ("[N]egligent failure to warn and failure to warn under breach of warranty are to be judged by the same standard . . . ."); Aleo v. SLB Toys USA, Inc., 466 Mass. 398, 410 (2013) (citations omitted) ("in a products liability case, as here, a finding of negligence necessarily encompasses a breach of warranty" but a breach of warranty does not necessarily include a finding of negligence).

unreasonably dangerous because of a manufacturing defect, a design defect, or a warning defect, that is, a failure reasonably to warn of the product's foreseeable risks of harm." Evans, 465 Mass. at 422.[8]

Whether the disc was defective or unreasonably dangerous is clearly disputed and is a question for the jury. Whether Champion as the manufacturer of the disc had a duty to warn of its dangers is also disputed. Champion argues that it cannot be liable because any danger posed by the disc was open and obvious. "The mere fact that a risk presented by a product design is open and obvious, or generally known, and that the product thus satisfies expectations, does not prevent a finding that the design is defective.'" Restatement (Third) of Torts: Products Liability § 2 comment f, at 28 (1998). "[T]he Third Restatement recognizes the possibility that a product may be made significantly safer through a reasonable alternative design even when consumers, unaware of the alternative design, expect the product to be no safer than it is." Evans, 465 Mass. at 425. While in general no duty to warn exists where the danger presented by a product is obvious, since a warning will not reduce the likelihood of injury, in this case it is a question of fact whether the risks inherent in the discs were "obvious to, or generally known by, foreseeable product users . . . ." Id. at 439. Thus, summary judgment must be denied.

B. Gross Negligence

Gross negligence is defined as follows:

> Gross negligence is substantially and appreciably higher in magnitude than ordinary negligence. It is materially more want of care than constitutes simple inadvertence. It is an act or omission respecting legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care. It is very great negligence, or the absence of slight diligence, or the want of even scant care. It amounts to indifference to present legal duty and to utter forgetfulness of legal obligations so far as other persons may be affected. It is a heedless and palpable violation of legal duty respecting the rights of others. The element of culpability

[8] No manufacturing defect is alleged here.

> which characterizes all negligence is in gross negligence magnified to a high degree as compared with that present in ordinary negligence. Gross negligence is a manifestly smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence.

Aleo v. SLB Toys USA, Inc., 466 Mass. 398, 410 (2013), quoting Altman v. Aronson, 231 Mass. 588, 591-592 (1919). Here, there is no evidence of a "heedless and palpable violation of legal duty respecting the rights of others" or a "high degree" of culpability compared to ordinary negligence. Aleo, 466 Mass. at 410, quoting Altman, 231 Mass. at 591-592. There is no evidence that Champion was "indifferent to the safety of its customers." Aleo, 466 Mass. at 411. Unlike the defendant in Aleo, Champion was not on notice of the alleged potential dangers of its product. It is undisputed that Champion had never been engaged in litigation on these matters prior to this suit; nor is it disputed that there are no legal standards governing discs. Cf. id. (concluding that the jury could have found the defendant grossly negligent because the defendant failed to test or certify that the slide complied with federal safety standards; it "retained but one employee in its safety assurance department to review approximately 4,000 certificates of compliance per month"; and, if it lost money due to a defective product, it knew it could recover from the international vendor pursuant to their contract.). Thus, summary judgment must enter on this claim.

C. Premises Liability

There is no evidence or argument suggesting that Champion had any control over the course. Thus, summary judgment must enter on this claim.

III. Claims against the Lazy Frog

A. Negligence, Products Liability, and Breach of Warranty

There are questions of fact as to whether Abdala purchased the disc that injured plaintiff from the Lazy Frog, whether the oral warnings provided to Lazy Frog customers who purchased

discs were adequate, and whether the discs themselves were defectively designed. See G. L. c. 106, § 2-314 (2) (c) ("a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind"); Restatement (Third) of Torts: Products Liability § 1 comment c (applying the rule in section 1 to commercial sellers of defective products).

To the extent the Lazy Frog argues that the sophisticated user doctrine should result in summary judgment against the plaintiff, this is clearly precluded by questions of fact. See Carrel v. National Cord & Braid Corp., 447 Mass. 431, 440-441 (2006) ("The sophisticated user doctrine relieves a manufacturer of liability for failing to warn of a product's latent characteristics or dangers when 'the end user knows or reasonably should know of a product's dangers.'"). The Lazy Frog's argument that the Correia defense applies is also unavailing. In Correira, the court held that "the plaintiff in a warranty action under G. L. c. 106, § 2-314, may not recover if it is found that, after discovering the product's defect and being made aware of its danger, he nevertheless proceeded unreasonably to make use of the product and was injured by it." Correira v. Firestone Tire & Rubber Co., 388 Mass. 342, 357 (1983). Where there is no allegation the plaintiff himself actually used the product, it cannot be said that "the *user's conduct alone* is the proximate cause of his injuries, as a matter of law . . . ." Id. at 356 (emphasis added).

B. Gross Negligence and Premises Liability

There is no evidence that the Lazy Frog exhibited the type of conduct necessary to survive summary judgment on a claim of gross negligence. There is also no evidence that the Lazy Frog had any role in the design, construction, or maintenance of the course. See *infra* § IV.

Therefore, the Lazy Frog had no duty to the plaintiff with respect to the course. Summary judgment shall be allowed on these claims.

IV. Claims against Gifford Individually and as President of the Club

A. Gifford's Individual Liability

The plaintiff's arguments about Gifford's individual liability focus on Gifford's role as the owner of the Lazy Frog, conflating Gifford with his business and referring to both as the seller of the disc. There is no evidence suggesting that the corporate veil should be pierced to provide for individual liability for Gifford or to provide for liability against the Lazy Frog for the club's actions or inactions. See, e.g., My Bread Baking Co. v. Cumberland Farms, Inc., 353 Mass. 614, 618 (1968) ("corporations are generally to be regarded as separate from each other and from their respective stockholders where there is no occasion 'to look beyond the corporate form for the purpose of defeating fraud or wrong, or for the remedying of injuries.'") (citation omitted). Summary judgment must enter for Gifford on this matter. The plaintiff's claims may proceed against Gifford only in his capacity as the representative of the club. "An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members." Mass. R. Civ. P. 23.2. See Tyler v. Boot & Shoe Workers' Union, 285 Mass. 54, 55 (1933) (a voluntary, unincorporated "association cannot be a party to litigation [as it] has no capacity as such to sue or to be sued in its own name alone.") (brackets added); Mass. R. Civ. P. 23.2, Reporter's Notes (1973) (describing the purpose of Rule 23.2 as providing for a mechanism of suit against representative of an unincorporated association because the association cannot be sued in its own name).

B. Negligence and Premises Liability

There is a dispute of fact as to whether the club was involved in the design, renovation, or maintenance of the course, or maintained some level of control over the course. "An owner or possessor of land owes a common-law duty of reasonable care to all persons lawfully on the premises." O'Sullivan v. Shaw, 431 Mass. 201, 204 (2000). "This duty includes an obligation to 'maintain[] his property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury, and the burden of avoiding the risk . . . ." Id. (citation omitted). He must also "warn visitors of any unreasonable dangers of which the landowner is aware or reasonably should be aware." Id. (citation and internal quotations omitted). However, "a landowner is 'not obliged to supply a place of maximum safety, but only one which would be safe to a person who exercises such minimum care as the circumstances reasonably indicate.'" Id.

There is no duty to warn of open and obvious dangers "because it is not reasonably foreseeable that a visitor exercising (as the law presumes) reasonable care for his own safety would suffer injury from such blatant hazards." Id. at 211. Whether the danger in this case was open and obvious is a question of fact. At least in some circumstances, even where a danger is open and obvious, a landowner may have a duty to remedy the danger. Dos Santos v. Coleta, 465 Mass. 148, 154-155 (2013). "In cases where a negligent failure to warn is not the only viable theory of negligence, such as where the plaintiff alleges negligent design, or negligent failure to comply with a company safety policy, the landowner may still owe a duty to the lawful entrant to remedy an open and obvious danger." Id. at 158 (citations omitted). "A plaintiff's own negligence in encountering the danger does not relieve the landowner of a duty to remedy that

danger where the plaintiff's negligent act can and should be anticipated by the landowner." Id. at 159.

C. Gross Negligence, Products Liability, and Breach of Warranty

There is no evidence of gross negligence here. There is also no evidence that the club sold or manufactured discs. As neither a seller nor a manufacturer, it is not liable for products liability or breach of warranty. Summary judgment must enter against the plaintiff on these claims.

ORDER

For the following reasons, it is hereby **ORDERED**:

- That the PDGA's Motion for Summary Judgment be **ALLOWED**;
- That Champion's Motion for Summary Judgment be **ALLOWED** with respect to gross negligence (Count II) and premises liability (Count V) and **DENIED** with respect to negligence (Count I), products liability (Count III) and breach of warranty (Count IV);
- That the Lazy Frog's Motion for Summary Judgment be **ALLOWED** with respect to gross negligence (Count II) and premises liability (Count V) and **DENIED** with respect to negligence (Count I), products liability (Count III) and breach of warranty (Count IV);
- That Gifford's Motion for Summary Judgment be **ALLOWED** to the extent it is asserted against him in his individual capacity and **ALLOWED** with respect to the claims asserted against him in his representative capacity for gross negligence (Count II), products liability (Count III) and breach of warranty (Count IV), and **DENIED**

with respect to the claims asserted against him in his representative capacity for negligence (Count I) and premises liability (Count V).

Richard J. Chin
Justice of the Superior Court

Dated: August 25 2014