

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

KELLY [REDACTED])	
)	
Plaintiff,)	
)	
v.)	Case No. 2:19-cv-2583
)	
QUIKTRIP CORPORATION)	
)	
Defendant.)	

COMPLAINT

In support of her lawsuit against Defendant Quiktrip Corporation, Plaintiff Kelly [REDACTED] alleges as follows:

PARTIES

1. Plaintiff Kelly [REDACTED] is a female citizen of the State of Kansas.
2. Defendant Quiktrip is a foreign-for-profit corporation organized under the laws of the State of Oklahoma. Upon information and belief, Quiktrip’s principal place of business is within the State of Oklahoma.
3. Defendant Quiktrip may be served through its registered agent, The Corporation Company, Inc., at 112 SW 7th Street, Suite 3C, Topeka, KS 66603.

JURISDICTION AND VENUE

4. The Court has original jurisdiction over this controversy pursuant to 28 U.S.C. § 1332 because the parties are completely diverse Plaintiff is a citizen of Kansas and Defendant is a citizen of Oklahoma and the amount in controversy exceeds \$75,000.
5. The Court has jurisdiction over Defendant because the wrongs alleged herein were committed within the District of Kansas.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred within the District of Kansas.

FACTS SUPPORTING PLAINTIFF'S COMPLAINT

7. On October 11, 2017, Plaintiff was a visiting business customer at the Quiktrip located at 7681 151st Street in Overland Park, Kansas.

8. Plaintiff frequented Defendant's gas stations/convenience stores in the past to purchase gas, convenience store items, and/or to put air in her car's tires.

9. Defendant offers free access to its air compressor to members of the general public.

10. Defendant's air compressor is located on Defendant's premises adjacent to parking spaces.

11. An air hose is attached to Defendant's air compressor, and a metal nozzle is attached to the end of the air hose.

12. The air hose is attached to a recoiling mechanism, which causes the hose to automatically recoil when not being firmly held by its user.

13. Defendant has offered free air for many years, but Defendant has not always used air hoses with automatic recoiling capabilities.

14. In the past, Defendant used air compressors with hoses that did not automatically recoil. Those non-recoiling hoses could be stored by manually returning them to a rack next to the compressor.

15. Non-recoiling hoses are safer than hoses that automatically recoil.

16. Other similar recoiling hoses also are available to Defendant that are designed to retract at slower speeds for the safety of users and those nearby.

17. On October 11, 2017, Plaintiff and her husband were at Defendant's store to put air in their car's tires.

18. An elderly woman arrived at or near the time when Plaintiff and her husband arrived at the air compressor.

19. Plaintiff's husband, who is a police officer, assisted the elderly woman put air in her tires.

20. Meanwhile, Plaintiff was standing next to the air compressor.

21. While Plaintiff's husband was helping the elderly woman, the air hose escaped his grasp and violently recoiled back to the compressor.

22. As it recoiled back to the compressor, the end of the hose flew up and hit Plaintiff in the right eye, causing tremendous physical damage to Plaintiff.

COUNT I – NEGLIGENCE

23. Plaintiff incorporates by reference the allegations contained in all preceding paragraphs as if fully set forth in Count I.

24. Without limiting a general allegation of negligence on the part of Defendant, Plaintiff alleges her injuries were the direct and proximate result of Defendant's negligence and failure to exercise ordinary care, including but not limited to the following particulars:

- a. Defendant allowed an unreasonably dangerous condition to exist on its premises the automatically-recoiling hose such that all those who stand in proximity of the air compressor could be injured under circumstances clearly foreseeable to Defendant.

- b. Defendant failed to remedy the unreasonably dangerous condition by utilizing one of the safer alternative air compressor hose designs or configurations available.
- c. Defendant failed to warn Plaintiff (or anyone else) that the hose could recoil in such a way as to cause physical injury to Plaintiff.
- d. Defendant failed to warn Plaintiff (or anyone else) not to stand next to the compressor while others used the hose to inflate tires.
- e. Defendant failed to warn Plaintiff (or anyone else) that the hose could be dangerous when used in the manner in which it was being used by Plaintiff's husband, which was consistent with its common and ordinary use.

25. Defendant had a duty to use due care in the maintenance of its premises for the safety of its customers, including Plaintiff.

26. Defendant breached this duty through the negligent actions and omissions described in this Complaint.

27. Defendant failed to use the ordinary degree of care required in maintaining a reasonably safe premise.

28. As a direct and proximate result of Defendant's negligence, Plaintiff has sustained damages for pain and suffering, mental anguish, temporary and permanent disability, medical expenses, lost earnings, and other losses, and will in the future sustain further damages for additional pain and suffering, mental anguish, temporary and permanent disability, medical expenses, lost earnings, and other losses.

29. As a direct and proximate result of the injuries sustained by Plaintiff Kelly [REDACTED], her husband, [REDACTED], has been caused to incur jointly with his wife, medical

bills and other related expenses, and has further suffered the loss and impairment of his wife's companionship, instruction, guidance, counsel, aid, assistance, comfort, consortium, society, and the loss and impairment of his wife's household services. For these, and all other recoverable losses, Plaintiff Kelly [REDACTED] makes a claim on her husband's behalf pursuant to K.S.A. 23-2605.

WHEREFORE, Plaintiff asks the Court to enter judgment in her favor and against Defendant Quiktrip for such damages, actual, nominal and punitive, as are fair and reasonable, for her costs incurred herein, for interest as allowed by law, and for such other and further legal and equitable relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury on all claims so triable.

DESIGNATION OF PLACE OF TRIAL

Pursuant to D. Kan. Rule 40.2, Plaintiff requests that trial be held in Kansas City, Kansas.

Dated: September 25, 2019

Respectfully submitted,

By: s/ Tim J. Riemann
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