

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

WESLEY and TIFANI TAYLOR, as Parents,
Natural Guardians, and Next Friends of
Presley Taylor, a minor,

Plaintiffs,

v.

AIRXCEL, INC., d/b/a SUBURBAN
MANUFACTURING COMPANY; and
FOREST RIVER MANUFACTURING, LLC,
d/b/a SANDPIPER;

Defendants.

Civil Action No. 17EV001160

CONSOLIDATED PRE-TRIAL ORDER

The following constitutes the Pre-Trial Order entered in the above-styled case after conference with counsel for the parties:

1. The name, address and phone number of the attorneys who will conduct the trial are as follows:

- a. Plaintiffs: Matthew Q. Wetherington and Robert N. Friedman, Werner Wetherington, P.C., 2860 Piedmont Road, Atlanta, Georgia 30305, Phone: 404-793-2723, Email: matt@wernerlaw.com, robert@wernerlaw.com; Wesley Starrett and Jack Clay, Clay & Starrett, LLC, 25 Atlanta Street SE, Suite B Marietta, GA 30060

b. Defendant Airxcel:

Matthew F. Barr, Esq.
Hawkins Parnell Thackston & Young LLP
303 Peachtree Street N.E.
Suite 4000
Atlanta, Georgia 30308-3243
(404) 614-7400
mbarr@hptylaw.com

2. The estimated time required for trial is: 2.5 days.
3. There are no motions or other matters pending for consideration by the Court except as follows:

- a. By Plaintiffs:

- 1) Consent Motion to Compromise Claim of a Minor and Dismiss Less Than All Parties as to Defendant Forest River Manufacturing; 2) Plaintiffs' Motion to Bring Equipment and Exemplars into the Courtroom; and 3) Plaintiffs' First Motions in limine. Importantly, one of Plaintiffs' Motions in Limine will be to exclude late disclosed evidence regarding Defendant's UL Certification(s) and evidence of dissimilar prior incidents or lack thereof. In an abundance of caution, Plaintiffs intend to identify an expert regarding Defendant's purported UL certification and, if the evidence is not excluded, Plaintiffs intend to seek a continuance and discovery regarding Defendant's warranty claims, consumer complaints, and real world monitoring of the subject product.

In addition, because the incident giving rise to this action occurred in Texas, Plaintiffs expect that the Court may apply the substantive law of Texas, where the incident occurred, to some or all of the claims alleged herein, except to the extent the law of Texas contravenes the public policy of the state of Georgia or as Georgia substantive law may otherwise be deemed to apply, pursuant to the doctrine of *lex loc delicti*. Given that choice of law and application of law will ultimately be the decision of the Court, Plaintiffs intend to prepare and submit a bench brief to the Court of the material differences between the strict product liability laws of Georgia and Texas.

- b. By Defendant Airxcel: Defendant reserves the right to file Motions in Limine prior to trial.
4. The jury may be qualified as to relationship with the following:
- a. Plaintiff's counsel;
 - b. Defendant's counsel; The parties to this action, all counsel of record, and Hartford Insurance Company
 - c. Employees and shareholders of Airxcel's insurer, Hartford Insurance Company;
 - d. Employees and shareholders of Forest River Manufacturing, LLC; and
 - e. Witnesses listed on the Parties' "Will Call" and "May Call" lists

By Defendant Airxcel: The parties to this action, all counsel of record, and Hartford Insurance Company

5. Discovery and Depositions

A. All discovery has been completed, unless otherwise noted, and the Court will not consider any further motion to compel discovery except for good cause shown. The parties, however, shall be permitted to take depositions of any person(s) for the preservation of evidence for use at trial.

- a. By Plaintiffs: Plaintiffs intend to take the deposition of a corporate representative from Forest River. Plaintiffs reserve the right to take the deposition of an opposing party's "will call" or "may call" witnesses, however, said depositions will not delay the trial of the case. Plaintiffs also reserve the right to take depositions for the preservation of evidence. Plaintiffs further object to the introduction at trial by Defendants of any documents, witnesses, or other items not previously identified in discovery.

- b. By Defendant Airxcel: The parties shall be entitled to take depositions for preservation of evidence.
- B. Unless otherwise noted, the names of the parties as shown in the caption to this order are correct and complete and there is no question by any party as to the misjoinder of nonjoinder of any parties.
- (a) By Plaintiffs: The caption currently reflects Forest River as a party Defendant. Plaintiffs have resolved their claims with Forest River and have filed 1) Plaintiffs' Petition to Compromise Claims of a Minor and 2) Plaintiffs' Motion to Drop Forest River as a Party Defendant.

6. The following is the Plaintiffs' brief and succinct outline of the case and contentions:

This is a strict liability and personal injury action arising from an incident on March, 16, 2015, wherein eighteen (18) month-old Presley Taylor sustained severe burns and permanent disfigurement from a defectively designed and/or manufactured range cover that was defectively designed and inspected by Defendant Airxcel. In addition, the subject range cover was installed in a dangerous condition as explicitly proscribed and approved by Defendant Airxcel.

For the Court's convenience, Plaintiffs' provide the following photos of the subject range cover in both the up and down position to provide context for Plaintiffs' claims:



The subject range cover is designed to open and close through a hinge mechanism on both sides of the cover. In a properly designed range cover, the hinge will lock in place and prevent the range cover from falling while in the raised position, unless unlocked and purposefully lowered. The subject range cover did not function this way. As designed and installed, it was impossible to lock the range cover in place. And worse, to the unsuspecting user, the range cover would appear to lock in place when it actually was not, leaving it prone to falling forward from movement in the RV. Defendant Airxcel is strictly liable for any proven defective condition of the range cover. Here is a photo of the subject RV's locking mechanism in the "locked" position – note that the flange arm cannot set into place flush with the hinge lock because it is blocked at the bottom by the top of the range.



On or about March 16, 2015, Plaintiffs Wesley and Tifani Taylor were staying in the subject RV in Katy, Texas, with their 18-month-old daughter, Presley Taylor. As Plaintiff Tifani Taylor was boiling vegetables in a pot on the stove while eighteen (18) month-old Presley Taylor was standing near the stove. Despite being in the “locked” position, the range cover suddenly and unexpectedly fell forward, knocking the pot of boiling water/vegetables off the stove and splashing boiling liquid onto Presley:



Plaintiffs seek damages from Defendants in an amount to be determined by the enlightened conscience of a fair and impartial jury and as demonstrated by the evidence, for all elements of compensatory damages—general and special—allowed by law, including damages for past and future medical expenses, mental and physical pain and suffering, permanent disfigurement, loss of enjoyment of life, and any and all other damages authorized by law.

7. The following is the Defendant’s brief and succinct outline of the case and contentions:

Defendant (“Suburban”) manufactured a range with cover which was used by Plaintiffs in a recreational vehicle manufactured by Forest River. Plaintiffs purchased the RV used from

RV World of Georgia. The range and cover manufactured by Suburban was installed and inspected by Forest River prior to being sold to a previous owner.

The subject cover was not defectively designed or manufactured by Suburban. Consequently, Plaintiffs are not entitled to recover in this action. The cover was reasonably suited to the use intended. The design of the cover was not the proximate cause of the injury sustained by Plaintiffs. The cover was not defective because it was safe when used in the normal and foreseeable manner.

The cover was designed to safely rest back at an angle during use. The hinge arm of the cover was designed to engage via tabs with the hinge bracket, which ensures that the cover is resting back at the designed and intended angle. Even if the tabs did not fully engage with the hinge bracket, the cover will not move forward given the sufficient resting angle of the cover.

At the time of the subject incident, the bracket was significantly deformed in a manner consistent with someone pulling hard on the cover without lifting it up out of its locked position. The deformity therefore establishes that the locking features were functional at the time of manufacture. The product was not deformed when it left Suburban.

There was a gap in the rear of the cabinetry which further decreased the space between the hinge arm and the range top. Also, the screws present at the time of the incident were different than the screws provided by Suburban and were loose, which also decreased the space between the hinge arm and the range top.

The cover had a conspicuous warning which indicated that the cover should be in the open upright position with the hinge arms locked in place.

Plaintiffs have not established a likely physical means through which the cover could have fallen forward in the manner described by Plaintiffs, and have not eliminated feasible alternate

scenarios by which the incident could have occurred. Plaintiffs have not proven that the subject incident occurred as a result of the product being used in its intended and foreseeable manner.

Defendants deny that Plaintiffs are entitled to the damages which they allege in this case.

8. The issues for determination by the jury are as follows:

a. By Plaintiffs:

Strict Liability (Defective Design and Manufacture); Causation, and Damages.

b. By Defendant: Strict liability, causation, and damages.

9. Specification of negligence including applicable code sections are as follows:

By Plaintiffs:

Plaintiffs do not intend to pursue a negligence claim in this action. Plaintiffs intend to pursue a strict liability claim against Defendant Airxcel under O.C.G.A. § 51-1-11.1 and/or Tex. Civ. Prac. & Rem. § 82.005(a).

10. If the case is based on a contract, either oral or written, the terms of the contract are as follows

(or, the contract is attached as an exhibit to this order): This case does not involve contracts.

Not applicable.

11. The types of damages and the applicable measure of those damages are stated as follows:

a. By Plaintiffs: Plaintiffs seek to recover any and all damages allowed by law to Presley Taylor, by and through her Parents and Natural Guardians, Wesley and Tifani Taylor. This includes damages for past, present, and future conscious pain and suffering, as well as all past, present and future compensatory, special, general, economic, and consequential damages from Defendant in accordance with the enlightened conscience of an impartial jury, including, but not limited to personal

injuries, disability, mental anguish, loss of the capacity for the enjoyment of life, disfigurement, expenses of litigation, and reasonable attorneys' fees.

A. SPECIAL DAMAGES: None

B. GENERAL DAMAGES computed and determined by the enlightened conscience of an impartial jury.

12. If this case involves divorce, each party shall present to the court at the pre-trial conference the affidavit required by Rule 24.4

Not applicable

13. The following facts are stipulated:

- a. The parties may use copies in lieu of originals.
- b. Unless noted, the parties have stipulated as to the authenticity of the documents listed and the exhibits listed may be admitted without further proof of authenticity.
- c. The RV where the subject incident occurred was assembled and first available for sale to the public on March 21, 2012.
- d. Defendant Airxcel provided written instructions to Forest River on the proper method for installing the subject range cover.
- e. Defendant Airxcel periodically audited the installation of its range covers in Forest River RVs.
- f. Defendant Airxcel never issued a stop order to Forest River or took any other remedial action related to the installation of its range covers in Forest River RVs.

- g. At the time of its original sale, the Subject RV was equipped with a range, cook top, and bi-fold range cover which was designed and manufactured by Defendant Airxcel. (Def. Ans. ¶¶ 12, 43).
- h. Defendant Airxcel provided the bi-fold range cover to Defendant Forest River for installation in the subject RV. (Def. Ans. ¶ 14).

Defendant: None at this time, though Defendant reserves the right to propose stipulations which may simplify and expedite the trial.

14. The following is a list of all documentary and physical evidence that will be tendered at the trial by the Plaintiff and Defendant. Unless noted, the parties have stipulated as to the authenticity of the documents listed and the exhibits listed maybe admitted without further proof of authenticity.

a. By Plaintiffs:

Plaintiff, at the discretion of Plaintiffs' attorney, may tender the following:

- 1) Copies of Plaintiff's medical records pursuant to O.C.G.A. §§ 9-11-34(c); 24-8-803(6); 24-9-901(a) and 24-9-902(8).
- 2) Plaintiff's discovery responses;
- 3) Defendant Airxcel's discovery responses;
- 4) The subject bifold range cover;
- 5) An exemplar range cover and/or range;
- 6) Photographs of the accident scene, location of the accident, the parties and RV involved, including enlargements;
- 7) Any Exhibits to any deposition taken in connection with this lawsuit;
- 8) Documents produced pursuant to Plaintiff's subpoena and relied upon by witnesses or identified by witnesses;
- 9) Any document produced by any party or non-party during the course of

discovery;

- 10) Any documents, photographs, videos or other evidence necessary for impeachment, cross-examination, or rebuttal;
- 11) Any documents relied upon by experts for any party;
- 12) Any document contained in the file of any expert identified by any party expected to testify at trial;
- 13) Any Exhibits attached or referenced in any expert reports;
- 14) The CV of any expert witness identified by any party as a witness expected to testify at trial;
- 15) Any books, treatises, studies or similar documents relied on and produced by any expert witness identified as a witness expected to testify at trial;
- 16) Pleadings on file with the Court;
- 17) Any document or tangible item listed in Defendants' list.

b. By Defendant:

- 1) All exhibits attached to depositions taken in the case;
- 2) The transcripts of the depositions taken in the case, if needed for purpose of impeachment or unavailability of a witness;
- 3) Documents exchanged between the parties in discovery;
- 4) Plaintiffs' medical records (including those from Texas Children's Hospital, Shriners Hospital for Children, Vibrant Kids Pediatrics, and Bay Star Ambulance);
- 5) All documents listed by Plaintiffs herein;
- 6) Photographs and videos obtained during the various inspections of the subject cover, before it was removed from the subject RV and afterward at
ATS

- 7) Exemplar cover (and range)
- 8) Suburban Bi-Fold range cover installation instructions
- 9) Suburban service and training manual
- 10) Suburban installation, operations, and service manual
- 11) Suburban design drawings for cover
- 12) John Leffler file materials
- 13) Jeff Hyatt file materials
- 14) Defendant reserve the right to supplement this list prior to trial upon reasonable notice.

15. Special authorities relied upon by Plaintiffs relating to peculiar evidentiary or other legal questions are as follows: Plaintiffs intend to pursue a strict liability claim against Defendant Airxcel under O.C.G.A. § 51-1-11.1 and/or Tex. Civ. Prac. & Rem. § 82.005(a).

16. Special authorities relied upon by Defendants relating to peculiar evidentiary or other legal questions are as follows: None.

17. All requests to charge anticipated at the time of trial will be filed in accordance with Rule 10.3.

18. The testimony of the following persons may be introduced by depositions:

Defendant: Any person who is deemed to be unavailable per Georgia law.

19. The following are list of witness(es) the

a. Plaintiffs **WILL** have present at trial: none

b. Plaintiffs **MAY** have present at trial:

1. Tifani Taylor;

2. Wesley Taylor;
3. Corporate Representative of Forest River;
4. Corporate Representative of Airxcel;
5. John Leffler;
6. Jeff Hyatt;
7. Robert Wozniak;
8. Brent Travis;
9. Dr. David Herndon;
10. Dr. William Norbury;
11. Dr. Karel Capek;
12. Dr. Mindy Fein;
13. Jamey Griffin;
14. Kathy Williford;
15. Any person who has provided any medical care to Plaintiff;
16. Any witness listed as a will call or may call witness by Defendant;
17. Any person necessary for purposes of impeachment or rebuttal;
18. Any record custodian needed for authentication; and
19. Any individual that may be required to testify about authenticity.

Plaintiffs reserve the right to call additional witnesses provided their names and addresses are provided to Defendants with sufficient notice prior to trial.

c. Defendant **WILL** have present at trial:

None.

d. Defendant **MAY** have present at trial:

1. Brent Travis
2. John Leffler, PE
3. Plaintiff's medical providers
4. Any witness listed by Plaintiff herein
5. Any witness identified during discovery

Defendant reserves the right to supplement this list prior to trial. Defendant further objects to any reference or testimony by any individual not identified by Plaintiffs in discovery.

Opposing counsel may rely on representation by the designated party that he will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his testimony by other means.

20. The form of all possible verdicts to be considered by the jury are as follows:

- a. By Plaintiffs: Counsel will submit a proposed verdict form at trial.
- b. By Defendant: Defendant reserves the right to prepare a verdict form at trial.

21. Potential for Settlement/Reporting/Costs

- a. The possibilities of settling the case are fair at this time.
- b. The parties **do** want the case reported.
- c. The parties propose that the cost of take down to be divided equally among parties.
- d. Other Matters: none.

This 25th day of July, 2018.

Submitted by:

WERNER WETHERINGTON, P.C.

/s/ Matthew Wetherington

MATTHEW Q. WETHERINGTON

Georgia Bar No. 339639

ROBERT N FRIEDMAN

Georgia Bar No. 945494

Attorneys for Plaintiffs

2860 Piedmont Road
Atlanta, GA 30305
404-793-1690

**HAWKINS PARNELL THACKSTON &
YOUNG LLP**

/s/ Matthew Barr

MATTHEW F. BARR

Georgia Bar No.: 039481

Attorney for Defendant

303 Peachtree Street
Suite 4000
Atlanta, Georgia 30308-3243
(404) 614-7400

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

WESLEY and TIFANI TAYLOR, as Parents,
Natural Guardians, and Next Friends of
Presley Taylor, a minor,

Plaintiffs,

v.

AIRXCEL, INC., d/b/a SUBURBAN
MANUFACTURING COMPANY; and
FOREST RIVER MANUFACTURING, LLC,
d/b/a SANDPIPER;

Defendants.

Civil Action No. 17EV001160

ORDER

IT IS HEREBY ORDERED that the foregoing, including attachments hereto, constitutes the **PRE-TRIAL ORDER** in the above case and supersedes the pleadings which may not be further amended except by order of the court to present manifest injustice.

This the _____ day of July, 2018.

Hon. Eric Richardson
Judge, State Court of Fulton County