

IN THE CIRCUIT COURT FOR THE 5<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR SUMTER COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO.:

ROGER AVERY, GLENIS AVERY,  
GARY AVERY, DANIEL AVERY,  
MICHAEL SMITH, SHARON SMITH,  
Parents and Nature Guardian of  
MATTHEW SMITH, EMMA SMITH,  
O.S., a minor, H.S., a minor,  
NATHAN MILLARD, and JACOB MILLARD,

Plaintiffs,

vs.

HOWARD MARC ZIMMERMAN,  
#1 TOM & JERRY'S AIRBOAT RIDES, LLC,  
and JERRY ALLEN SLOAN,

Defendants,

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiffs, ROGER AVERY, GLENIS AVERY, GARY AVERY, DANIEL AVERY, MICHAEL SMITH, SHARON SMITH, MATTHEW SMITH, EMMA SMITH, O.S., a minor, H.S., a minor, NATHAN MILLARD, and JACOB MILLARD (hereinafter collectively "Plaintiffs"), sue Defendants, HOWARD MARC ZIMMERMAN, #1 TOM & JERRY'S AIRBOAT RIDES, LLC and JERRY ALLEN SLOAN for any and all available pecuniary and/or non-pecuniary damages and allege as follows:

**PARTIES, JURISDICTION AND VENUE**

1. This is a cause of action for damages far in excess of fifteen thousand dollars (\$15,000.00) exclusive of costs, interest and attorney fees.

2. At all material times, all of the following Plaintiffs were and are residents and citizens of the United Kingdom:

- a. Plaintiff, ROGER AVERY,
- b. Plaintiff GLENIS AVERY,
- c. Plaintiff GARY AVERY,
- d. Plaintiff DANIEL AVERY,
- e. Plaintiff MICHAEL SMITH,
- f. Plaintiff SHARON SMITH,
- g. Plaintiff MATTHEW SMITH,
- h. Plaintiff, EMMA SMITH,
- i. Plaintiff, O.S., a minor,
- j. Plaintiff, H.S., a minor,
- k. Plaintiff NATHAN MILLARD, and
- l. Plaintiff, JACOB MILLARD.

3. At all material times Defendant, JERRY ALLEN SLOAN (hereinafter “SLOAN”), was and is a citizen of Florida who lives and does business in Sumter County, Florida.

4. At all material times Defendant, #1 TOM & JERRY’S AIRBOAT RIDES, LLC (hereinafter “TOM & JERRY’S AIRBOAT RIDES”), was and is a Florida corporation that does continuous and systematic business in Sumter County, Florida.

5. At all material times Defendant, HOWARD MARC ZIMMERMAN (hereinafter “ZIMMERMAN”) was and is a citizen of Florida who lives in Hernando County, Florida.

6. Venue is proper in Sumter County, Florida as all tortious acts complained of occurred within Sumter County, Florida.

**FACTS COMMON TO ALL COUNTS**

7. At all material times, SLOAN was the registered owner of an airboat on which all Plaintiffs were passengers (hereinafter “the Airboat”) on October 24, 2017 (hereinafter date of the “subject incident”).

8. At all material times, TOM & JERRY’S AIRBOAT RIDES was:

- a. Operator of the Airboat and/or subject excursion, and/or
- b. Employer of ZIMMERMAN.

9. At all material times, ZIMMERMAN:

- a. Acting as Captain of the Airboat and/or tour guide, acted within the course and scope of his employment with TOM & JERRY’S AIRBOAT RIDES, his employer.

10. On October 24, 2017, Plaintiffs were passengers in the Airboat owned by Defendant, SLOAN, operated by Defendant, TOM & JERRY’S AIRBOAT RIDES and Captained/Guided by Defendant, ZIMMERMAN, on Lake Panasoffkee in Lake Panasoffkee, Florida.

11. Plaintiffs had purchased their tickets from Defendant TOM & JERRY’S AIRBOAT RIDES. Plaintiffs are no longer in possession of said tickets.

12. On October 24, 2017, Defendant, ZIMMERMAN, operated the subject airboat occupied by Plaintiffs in a negligent and unsafe manner, and struck a tree head-on while on Lake Panasoffkee.

**COUNT I**

**NEGLIGENCE OF DEFENDANT HOWARD MARC ZIMMERMAN**

Plaintiffs repeat and reallege paragraphs 1 through 12 (and all sub-paragraphs) above and further allege:

13. Defendant, ZIMMERMAN, as the captain/tour guide of the Airboat had a duty to use the highest degree of care when operating the Airboat on October 24, 2017.

14. Defendant, ZIMMERMAN was negligent and breached his duty to Plaintiffs by:

- a. operating the Airboat in a unsafe, negligent and/or reckless manner, including but not limited to traveling at excessive speeds and/or too close to fixed/stationary objects, such as trees;
- b. failing to properly repair and maintain the Airboat, including but not limited to its steering gear, cable, guides and fasteners;
- c. failing to provide proper routine maintenance and upkeep of the Airboat;
- d. failing to do a proper pre-ride inspection of the Airboat, including but not limited to the steering gear, cable, guide and fasteners;
- e. failing to provide a warning or adequate warning to the passengers about foreseeable risks of harm while on the excursion/guided tour, including but not limited to collisions and/or allisions;
- f. failing to provide seatbelts or other safety straps or harnesses for the Airboat passengers;
- g. failing to provide sufficient arresting devices such as cushions to prevent serious injury in the event of a collision and/or allision;
- h. failure to maintain a lookout;

- i. failure to take prompt and proper action to avoid a collision when it became apparent the Airboat was out of control and/or lost steerage and a collision/allision was imminent;
- j. failing to operate the Airboat safely in accordance with the Rules of the Road; and/or
- k. failing to utilize or have on board proper safety equipment and gear which would have avoided the collision.

15. As a direct and proximate result of the negligent and reckless conduct of Defendant, HOWARD MARC ZIMMERMAN, Plaintiffs sustained personal and mental injuries, resulting in pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life and expense of hospitalization, medical and nursing care and treatment, loss of earnings, and/or aggravation of previously existing conditions. The losses are either permanent or continuing and Plaintiffs will suffer the losses in the future.

16. Plaintiffs demand a trial by jury.

WHEREFORE, Plaintiffs sue Defendant, HOWARD MARC ZIMMERMAN for any and all available damages in excess of \$15,000.00 plus costs, pre-judgment and post judgment interest.

**COUNT II**  
**NEGLIGENCE OF DEFENDANT #1 TOM & JERRY'S AIRBOAT RIDES, LLC**

Plaintiffs repeat and reallege paragraphs 1 through 12 (and all sub-paragraphs) above and further allege:

17. At all material times, Defendant, TOM & JERRY'S AIRBOAT RIDES, had the duty to use the highest degree of care when operating the Airboat in the course of its airboat ride business.

18. At all material times, Defendant, TOM & JERRY'S AIRBOAT RIDES, is liable for its own active negligence and/or vicariously liable for the acts of its employees, contractors, agents and/or persons acting on its behalf while acting within the course and scope of their employment and/or assigned duties, including but not limited to operation, repair and maintenance of the Airboat at times leading up to and on the date of the subject incident.

19. At all material times, including on October 24, 2017, Defendant, TOM & JERRY'S AIRBOAT RIDES, was actively negligent and breached its duty to Plaintiffs by:

- a. failing to create/develop, implement and/or ensure adherence to (i.e., follow) routine and customary repair and maintenance policies and procedures to airboats within its fleet, including but not limited to the Airboat;
- b. failing to follow manufacturer's and/or sub-component manufacturers' repair and maintenance recommendations of the airboats within its fleet, including but not limited to the Airboat;
- c. failing to properly repair and maintain the Airboat, including but not limited to its steering gear, cable, guides and fasteners;
- d. falsifying repair and maintenance to airboats within its fleet, including the Airboat;
- e. gerrymandering repairs and maintenance to airboats within its fleet that presented predictable and foreseeable risks of failure and, therefore, harm to passengers on board airboats within its fleet, including the Airboat;
- f. forcing captains to operate airboats within its fleet that were labeled "out of service" due to needed repair and maintenance to an airboat(s) within its fleet, including the Airboat;

- g. forcing captains to operate airboats within its fleet labeled “out of service” due to foreseeable, inevitable and predictable mechanical failure of one or more airboat systems and risk of harm to passengers on board its fleet of airboats, including the Airboat;
- h. failing to head and prudently act upon repeated warnings that the Airboat’s steering cable/system was in need of repair and “going to fail” and result in injury or death to passengers aboard the Airboat;
- i. failing to provide proper routine maintenance and upkeep of the Airboat;
- j. failing to create, implement and ensure adherence to proper pre-ride instructions to passengers aboard its airboats within its fleet, including the Airboat;
- k. failing to create, implement and ensure adherence to proper pre-ride inspection of its airboats within its fleet, including the Airboat;
- l. failing to do a proper pre-ride inspection of the Airboat including the steering gear;
- m. failing to create, implement and ensure adherence to proper pre-ride warnings to passengers aboard its airboats about foreseeable risks involving airboat rides/excursions, including the Airboat ride on the date in question;
- n. failing to provide any warnings to the passengers about the risk of collision;
- o. failing to provide seatbelts or other safety straps or harnesses for the Airboat passengers;
- p. failing to provide a lookout;

- q. failing to create, implement and ensure adherence to proper operational and safety instructions to captains/tour guides operating airboats within its fleet, including the Airboat ride on the date in question;
- r. failing to operate the Airboat safely in accordance with the Rules of the Road;
- s. failing to utilize or have on board proper safety equipment and gear which would have avoided the collision;
- t. failing to hire properly credentialed and/or experienced captains and crew, including ZIMMERMAN;
- u. failing to properly supervise its captain and employees when operating its airboat business, including ZIMMERMAN;

20. Defendant, TOM & JERRY'S AIRBOAT RIDES, through its employee, contractor, agent and/or person acting on its behalf, including ZIMMERMAN, was passively negligent and/or vicariously liable, and breached its duty to Plaintiffs by:

- a. operating the Airboat in a negligent and/or reckless manner, including but not limited to excessive speed and too close to fixed objects, such as trees;
- b. failing to properly repair and maintain the Airboat, including but not limited to its steering gear and cable;
- c. failing to provide proper routine maintenance and upkeep of the Airboat;
- d. failing to do a proper pre-ride inspection of the Airboat, including but not limited to the steering gear;
- e. failing to provide a warning or adequate warning to the passengers about foreseeable risks of harm, including but not limited to collisions and/or allisions;

- f. failing to provide seatbelts or other safety straps or harnesses for the Airboat passengers;
- g. failing to provide sufficient arresting devices such as cushions to prevent serious injury in the event of a collision and/or allision;
- h. failure to maintain a lookout;
- i. failure to take proper, prompt and effective action to avoid a collision when it became apparent the Airboat was out of control and a collision/allision was imminent;
- j. failing to operate the Airboat safely in accordance with the Rules of the Road; and/or
- k. failing to utilize or have on board proper safety equipment and gear which would have avoided the collision.

21. As a direct and proximate result of the active negligent conduct and/or negligence of ZIMMERMAN, while acting within the course and scope of this employment of Defendant, TOM & JERRY'S AIRBOAT RIDES, LLC, Plaintiffs sustained personal and mental injuries, resulting in pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life and expense of hospitalization, medical and nursing care and treatment, loss of earnings and loss of ability to earn money, and/or aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiffs will suffer the losses in the future.

22. Plaintiffs demand a trial by jury.

WHEREFORE, Plaintiffs sue Defendant, #1 TOM & JERRY'S AIRBOAT RIDES, LLC for any and all available damages in excess of \$15,000.00 plus costs, pre-judgment and post judgment interest.

**COUNT III**  
**NEGLIGENCE OF DEFENDANT JERRY ALLEN SLOAN**

Plaintiffs repeat and reallege paragraphs 1 through 12 (and all sub-paragraphs) above and further allege:

23. Defendant SLOAN as the owner of the Airboat involved in the October 24, 2017, incident had the duty to use the highest degree of care to ensure timely and appropriate repair, maintenance and operation of his airboats, including the Airboat.

24. Defendant SLOAN was actively negligent and breached that duty by:

- a. failing to create/develop, implement and/or ensure adherence to (i.e., follow) routine and customary repair and maintenance policies and procedures to airboats within its fleet, including but not limited to the Airboat;
- b. failing to follow manufacturer's and/or sub-component manufacturers' repair and maintenance recommendations of the airboats within its fleet, including but not limited to the Airboat;
- c. failing to properly repair and maintain the Airboat, including but not limited to its steering gear, cable, guides and fasteners;
- d. falsifying repair and maintenance to airboats within its fleet, including the Airboat;
- e. gerrymandering repairs and maintenance to airboats within its fleet that presented predictable and foreseeable risks of failure and, therefore, harm to passengers on board airboats within its fleet, including the Airboat;

- f. forcing captains to operate airboats within its fleet that were labeled “out of service” due to needed repair and maintenance to an airboat(s) within its fleet, including the Airboat;
- g. forcing captains to operate airboats within its fleet labeled “out of service” due to foreseeable, inevitable and predictable mechanical failure of one or more airboat systems and risk of harm to passengers on board its fleet of airboats, including the Airboat;
- h. failing to head and prudently act upon repeated warnings that the Airboat’s steering cable/system was in need of repair and “going to fail” and result in injury or death to passengers aboard the Airboat;
- i. failing to provide proper routine maintenance and upkeep of the Airboat;
- j. failing to create, implement and ensure adherence to proper pre-ride instructions to passengers aboard its airboats within its fleet, including the Airboat;
- k. failing to create, implement and ensure adherence to proper pre-ride inspection of its airboats within its fleet, including the Airboat;
- l. failing to do a proper pre-ride inspection of the Airboat including the steering gear;
- m. failing to create, implement and ensure adherence to proper pre-ride warnings to passengers aboard its airboats about foreseeable risks involving airboat rides/excursions, including the Airboat ride on the date in question;
- n. failing to provide any warnings to the passengers about the risk of collision;

- o. failing to provide seatbelts or other safety straps or harnesses for the Airboat passengers;
- p. failing to provide a lookout;
- q. failing to create, implement and ensure adherence to proper operational and safety instructions to captains/tour guides operating airboats within its fleet, including the Airboat ride on the date in question;
- r. failing to operate the Airboat safely in accordance with the Rules of the Road;
- s. failing to utilize or have on board proper safety equipment and gear which would have avoided the collision;
- t. failing to hire properly credentialed and/or experienced captains and crew, including ZIMMERMAN;
- u. failing to properly supervise its captain and employees when operating its airboat business, including ZIMMERMAN;

25. As a direct and proximate result of the negligent conduct of Defendant, JERRY ALLEN SLOAN, Plaintiffs sustained personal and mental injuries, resulting in pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life and expense of hospitalization, medical and nursing care and treatment, loss of earnings and loss of ability to earn money, and/or aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiffs will suffer the losses in the future.

26. Plaintiffs demand a trial by jury.

WHEREFORE, Plaintiffs sue Defendant, JERRY ALLEN SLOAN for any and all available damages in excess of \$15,000.00 plus costs, pre-judgment and post judgment interest.

Dated this 5<sup>th</sup> day of April 2019.

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