

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

DERRICK WILLIAMS,	§	
INDIVIDUALLY AND ON BEHALF	§	
OF D. W., A MINOR,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
WORLDWISE, INC., and	§	
DOLGENCORP OF TEXAS, INC.,	§	Civil Action No. _____
d/b/a DOLLAR GENERAL STORES	§	
Defendants.		

PLAINTIFFS' ORIGINAL COMPLAINT AND JURY DEMAND

Plaintiff Derrick Williams, Individually and on Behalf of D. W., a Minor, files this Original Complaint and asks the Court to enter judgment against Defendant WorldWise, Inc. (hereinafter, "Defendant WorldWise") and Defendant Dolgencorp of Texas, Inc. d/b/a Dollar General Stores (hereinafter, "Defendant Dollar General") as follows:

I.

NATURE OF ACTION

1. This lawsuit is brought to recover damages resulting from a serious eye injury caused by a retractable dog leash on April 22, 2008. D. W., a Minor, suffered severe

injuries to her left eye when the defective retractable leash broke, as stated in more detail below.

II.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff Derrick Williams is the natural father of D. W., a Minor. They currently reside in Arlington, Texas.

3. Defendant WorldWise is a California corporation formed under the laws of the State of California with its principal place of business located at 160 Mitchell Boulevard, San Rafael, California 94903. Defendant WorldWise may be served with process by serving its agent, CT Corporation, 350 North Saint Paul Street, Dallas, Texas 75201.

4. Upon information and belief, Defendant WorldWise is doing business in the United States, including the state of Texas, and within the judicial district of the United States District Court for the Northern District of Texas.

5. Defendant Dolgencorp of Texas, Inc. d/b/a Dollar General Stores is a Tennessee corporation formed under the laws of the State of Tennessee with its principal place of business located at 100 Mission Ridge, Goodlettsville, Tennessee 37072. Defendant Dolgencorp of Texas, Inc. d/b/a Dollar General Stores may be served with process by serving its agent, Corporation Services Company d/b/a CSC-Lawyers INCO, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

6. Upon information and belief, Defendant Dolgencorp of Texas, Inc. d/b/a Dollar General Stores is doing business in the United States, including the state of Texas, and

within the judicial district of the United States District Court for the Northern District of Texas.

7. The Court has jurisdiction over this lawsuit pursuant to 29 U.S.C. § 1332 (a)(1) because Plaintiffs and all Defendants are citizens of different states, and the amount in controversy exceeds \$75,000.00, excluding interests and costs.

8. Venue is proper pursuant to 28 U.S.C. § 1391 (b) because it is a judicial district where a substantial part of the events or omissions giving rise to this claim occurred. Specifically, some of the conduct alleged herein has occurred or been directed towards various entities and individuals doing business within this District.

III.

FACTUAL BACKGROUND

9. Defendant WorldWise manufactures and sells pet items, including toys, treats, and accessories (including leashes and collars) for cats and dogs in the United States.

10. Defendant WorldWise's pet products are made under the SmartyKat® and PoochPlanet® brand names and are sold at over 30,000 major retail stores nationwide, specifically Defendant Dollar General.

11. Under Defendant WorldWise's brand names are the SnazzyKat™ and SlyDog™ products that feature the SquareOne™ System.

12. According to its web site the SquareOne™ System is as follows:

“By identifying your pet's 12 most essential needs and providing products designed to meet each of those needs you'll become a better pet owner. Since cats and dogs have completely different needs, we've created a special system for each.”

13. One of the SlyDog™ products manufactured by Defendant WorldWise is a retractable dog leash.

14. Prior to April 22, 2008, Derrick Williams purchased a SlyDog™ Retractable Dog Leash from Defendant Dollar General, specifically the Dollar General store located at 453 Fielder North Plaza, Arlington, Texas 76012.

15. On April 22, 2008, D. W., a twelve year old minor, was walking her puppy and using the SlyDog™ retractable dog leash when the retractable leash broke. It suddenly retracted or recoiled into her face. The metal clip of the retractable leash struck D. W. in her left eye. She suffered immediate pain and loss of vision and was transported to the emergency room by Mr. Williams.

16. As a result of the metal part SlyDog™ retractable dog leash striking D. W. left eye, she suffered a corneal laceration with uveal prolapse which required immediate surgery. To date, and after a total of three surgeries to her left eye, she is still consulting with experts to determine if further surgeries are required.

17. On September 3, 2008, nearly six months after the accident, the U.S. Consumer Product Safety Commission in cooperation with Defendant WorldWise recalled approximately 223,264 units of its SlyDog™ Retractable Dog Leash.

18. Defendant WorldWise reported consumer complaints indicating a hardware failure of the product's metal clasp, causing the leash to break free from the dog's collar.

19. Defendant WorldWise was notified that injuries had occurred to consumers because the metal clasp connecting the leash to a dog's collar bent or broke while in use,

causing the leash to recoil back unexpectedly and posing a serious risk of injury to consumers.

20. At the time of the recall, Defendant WorldWise had previously received several reports of injuries, including facial cuts, displaced eye lens, bruised bones and broken teeth.

21. Defendant WorldWise is now selling a modified design of the SlyDog™ Retractable Dog Leash featuring a plastic collar clip, currently available at Dollar General stores nationwide (including the store located at at 453 Fielder North Plaza, Arlington, Texas 76012). The modified design of the SlyDog™ Retractable Dog Leash also implemented a pound limit (for dogs up to 33 pounds).

IV.

CLAIMS

A. PRODUCTS LIABILITY CLAIM AGAINST DEFENDANTS.

22. Plaintiffs incorporate all previous paragraphs by reference.

23. Plaintiffs will show that the SlyDog™ Retractable Dog Leash was defectively designed, marketed, sold or otherwise placed in the stream of commerce by Defendant WorldWise in the following non-exclusive particulars.

24. The description of the product defect is as follows:

- a. Failing to adequately design the SlyDog™ Retractable Dog Leash;
- b. Failing to properly warn of the hazards and/or guard against the hazards associated with the use of the SlyDog™ Retractable Dog Leash;
- c. Failing to adequately test and inspect the SlyDog™ Retractable Dog Leash prior to its distribution and sale;

- d. Failing to exercise its duty to warn of such dangers or to modify the SlyDog™ Retractable Dog Leash to eliminate such hazards;
- e. Failing to implement the generally recognized and accepted industry standards in the design and/or manufacture of the SlyDog™ Retractable Dog Leash;
- f. Failing to provide a warning that when using the SlyDog™ Retractable Dog Leash may cause eye injuries;
- g. Breaching its express warranties in that the retractable leash was reported in advertising, literature and manuals as being safe when it was not; and
- h. Such other acts or omissions that may be learned in discovery or at trial.

25. For the above reasons, the SlyDog™ Retractable Dog Leash was unreasonably dangerous beyond the contemplation of the average user. The above-described defects were the proximate and/or producing cause of the injuries suffered by D. W., a Minor.

B. NEGLIGENCE AGAINST DEFENDANTS.

26. Plaintiffs incorporate all previous paragraphs by reference.

27. The occurrence made the basis of the suit, and the resulting injuries and damages, were proximately caused by the negligent conduct of Defendants. Defendants knew or in the exercise of ordinary or reasonable care should have known, that the retractable leash it manufactured, sold, designed, supplied, distributed or sold was dangerous and/or harmful to Plaintiffs.

28. These acts and omissions taken by themselves or in combination, were a proximate cause of Plaintiffs' injuries and damages.

29. Defendants assumed the duty to improve upon the safety of its retractable dog leash by replacing the leash with a modified design. Once the duty was assumed,

Defendants had an obligation to complete the remedy by using reasonable means available to it to cause its replacement.

C. PLAINTIFFS' DAMAGES.

30. Plaintiffs incorporate all previous paragraphs by reference.

31. Plaintiffs seek all elements of damages, in the past and in the future, permitted under the law from Defendants including but not limited to, claims for medical and/or hospitalization care, mental anguish, pain, personal injuries, torment, suffering, loss of earnings, lost earning capacity and all said damages in an amount that the Williams would show they are entitled to at the time of trial.

32. Plaintiffs further assert a claim for costs of court and pre-judgment and post-judgment interest allowed under Texas law against Defendants.

33. Defendants' conduct as described in more detail above constitutes malice and/or gross negligence. Defendants' acts and omissions, when viewed from the standpoint of the Defendants at the time of the acts and omissions, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference or worse with regard to the rights, safety and welfare of the Williams.

34. Accordingly, Plaintiffs sue for exemplary damages in an amount to be determined at trial by a fair and impartial jury after hearing all of the evidence and considering all of the circumstances. Given the early stage of this action, it is difficult to

predicate the maximum amount of damages Plaintiffs will present to a jury for consideration.

V.

DEMAND FOR JURY

35. Plaintiffs demand that all issues of fact in this case be tried to a jury and tender herewith the appropriate fee.

VI.

REQUESTED RELIEF

36. For these reasons, Plaintiffs request that Defendant WorldWise, Inc. and Defendant Dolgencorp of Texas, Inc. d/b/a Dollar General Stores be cited to appear and answer herein and that after trial, Plaintiffs recover the following:

- a. Actual damages against Defendants;
- b. Exemplary damages in an amount to be determined by the trier of fact;
- c. Attorneys' fees;
- d. Pre-judgment and post-judgment interest at the maximum rate allowable by law;
- e. Court costs; and
- f. All other relief the Court deems appropriate.

Respectfully submitted,

/s/ Stephen W. Drinnon

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