

STATE OF NEW YORK
SUPREME COURT : ERIE COUNTY

NANCY HACKEMER As Limited Administrator of
the Estate of JAMES HACKEMER, Deceased
3534 Foster Road
Gowanda, New York 14070

Plaintiff,

v.

COMPLAINT

CNL INCOME DARIEN LAKE, LLC
P.O. Box 543185
Dallas, Texas 75345

Index No.

HERSCHEND FAMILY ENTERTAINMENT
CORPORATION
2800 W 76 Country Boulevard
Branson, Missouri 65616

Defendants.

FILED
ACTIONS & PROCEEDINGS

JUL 29 2011

ERIE COUNTY
CLERK'S OFFICE

Plaintiffs, above-named, by Plaintiffs' attorneys, CELLINO & BARNES,
P.C., for complaint against defendant, above-named, allege upon information and belief:

1. At all times herein-relevant, plaintiff has been a resident of the County of Erie and State of New York.
2. At the time of his death on July 8, 2011, James Hackemer was a resident of the County of Erie and State of New York.
3. Pursuant to a Decree of the Surrogate Court of Erie County, dated

July 28, 2011, Preliminary Letters of Administration were awarded to Nancy Ann Hackemer for the Estate of James Hackemer. Preliminary Letters of Administration are attached as Exhibit A.

4. At all times herein-relevant, defendant CNL Income Darien Lake, LLC has been a foreign limited liability company authorized to conduct business in the State of New York.

5. At all times herein-relevant, defendant Herschend Family Entertainment Corporation has been a foreign business corporation authorized to conduct business in the State of New York.

6. At all times herein-relevant, defendants transacted business within the State of New York and contracted to supply goods and services within the State of New York.

7. At all times herein-relevant, defendants, through their agents, servants and employees, committed tortious acts within the State of New York.

8. At all times herein-relevant, defendants regularly engaged in and solicited business within the State of New York and engaged in other persistent courses of conduct within the State of New York and derived substantial revenue from goods and services used or consumed within the State of New York.

9. At all times herein-relevant, defendants owned, used and/or possessed real property within the State of New York.

10. Pursuant to CPLR §302, this Court has jurisdiction over defendants.

11. At all times herein-relevant, defendant owned, operated, maintained and ran property and premises commonly known as the Darien Lake Theme Park located at 9993 Allegheny Road in Darien Center, Genesee County, New York.

12. At all times herein-relevant, defendants owned, maintained and operated a roller coaster ride commonly known as the "Ride of Steel".

13. On or about July 8, 2011, James Hackemer was a patron at the Darien Lake Theme Park and was permitted to be a passenger on the defendants' Ride of Steel roller coaster.

14. On or about July 8, 2011, James Hackemer was caused to be thrown from the Ride of Steel roller coaster while it was in operation and was caused to be thrown to the tracks and struck by the roller coaster and thrown to the ground below.

15. On or about July 8, 2011, James Hackemer died from injuries described in the foregoing paragraph.

**AS AND FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANTS**

16. Plaintiffs repeat and re-allege Paragraphs 1 through 15 above as if set forth in their entirety herein.

17. James Hackemer died wrongfully as a direct result of the negligence and/or recklessness of the agents, servants and/or employees of the defendants.

18. The incident mentioned in Paragraph 14 above occurred solely as a result of the negligence and/or recklessness of the defendants' agents, servants and/or

employees, without any negligence attributable in any measure to the decedent James Hackemer.

19. The limitations on liability set forth in CPLR Article 16 do not apply and one of the exemptions set forth in §1602 of the CPLR applies.

20. Due to the wrongful death of decedent James Hackemer, as caused by the negligence and/or recklessness of the agents, servants and/or employees of the defendants, plaintiff is entitled to an award of damages in an amount which exceeds the monetary jurisdictional limits of all lower New York Courts but does not exceed the monetary jurisdictional limits of the New York Supreme Court.

**AS AN FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANTS**

21. Plaintiffs repeat and re-allege Paragraphs 1 through 20 above as if set forth in their entirety herein.

22. James Hackemer suffered extreme mental shock and anguish, including fear of grave injury and/or impending death before his demise and also suffered conscious pain, suffering and resulting damages prior to his death; and said extreme mental shock, anguish, fear of grave injury and/or impending death, conscious pain and suffering and resulting damages were caused solely by the negligence and/or recklessness of defendants' agents, servants and/or employees.

23. As the result of James Hackemer's extreme mental shock, anguish, fear of grave injury and/or impending death, conscious pain and suffering and resulting damages, the plaintiff demands an award of damages which exceeds the monetary

jurisdictional limits of all lower New York Courts but which does not exceed the monetary jurisdictional limits of the New York State Supreme Court.

**AS AND FOR A THIRD CAUSE OF ACTION
AGAINST DEFENDANTS**

24. Plaintiffs repeat and re-allege Paragraphs 1 through 23 above as if set forth in their entirety herein.

25. As a direct result of the death of James Hackemer, pecuniary loss and emotional damages have resulted to the family and heirs of James Hackemer.

26. The aforementioned damages include funeral expenses, economic loss including loss of income, support and services as a result of James Hackemer's death, and losses to his two surviving children, including intellectual, moral and physical guidance, loss of companionship and loss of income and financial assistance that the decedent would have given the children had he lived.

27. As a direct result of James Hackemer's death, and the pecuniary, economic, emotional and psychological losses suffered by the family, heirs and minor children of James Hackemer, plaintiff demands an amount which exceeds the monetary jurisdictional limits of all lower New York State Courts but which does not exceed the monetary jurisdictional limits of the New York State Supreme Court.

WHEREFORE, plaintiffs demands judgment against defendants as follows:

- (a) In the First Cause of action in an amount which exceeds the monetary jurisdictional limits of all lower New York State Courts but

which does not exceed the monetary jurisdictional limits of the New York State Supreme Court;

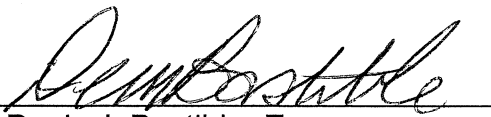
(b) In the Second Cause of action in an amount which exceeds the monetary jurisdictional limits of all lower New York State Courts but which does not exceed the monetary jurisdictional limits of the New York State Supreme Court;

(c) In the Third Cause of action in an amount which exceeds the monetary jurisdictional limits of all lower New York State Courts but which does not exceed the monetary jurisdictional limits of the New York State Supreme Court; and

Plaintiffs demand such other, further and different relief as the Court may deem just and proper, together with the costs and disbursements of this action.

DATED: Buffalo, New York
July 27, 2011

CELLINO & BARNES, P.C.

By: 
Denis J. Bastible, Esq.
Attorneys for Plaintiffs
2500 Main Place Tower
350 Main Street
Buffalo, NY 14202-3725
(716) 854-2020