



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

BRENDEN JOSEPH MCCLANAHAN,  
Individually and as Administrator of the  
ESTATE OF TIMOTHY J.  
MCCLANAHAN, deceased, and GINA  
SKIPPER as Next Friend of Minor,  
MOLLIE ANNE SKIPPER,

Plaintiffs,

v.

PRIORITY 1 AIR RESCUE  
OPERATIONS, INC., PRIORITY 1 AIR  
RESCUE CONSULTING, INC.,  
PRIORITY 1 AIR RESCUE OPERATIONS:  
ARIZONA, LP, PRIORITY 1 AIR RESCUE:  
OPERATIONS (ARIZONA), LP,  
PRIORITY 1 AIR RESCUE  
OPERATIONS ARIZONA, LP, PRIORITY  
1 AIR RESCUE OPERATIONS, INC., d/b/a:  
LAST DITCH SURVIVAL SYSTEMS, and  
PRIORITY 1 AIR RESCUE SERVICES,  
INC.,

Defendants.

C.A. No.:

JURY OF SIX DEMANDED

COMPLAINT

1. The plaintiff Brenden Joseph McClanahan is the Administrator of the Estate of Timothy J. McClanahan and is an adult individual who resides at 292 Porcher Street, Dover, Delaware, 19901.

2. The plaintiff, Gina Skipper, is the Next Friend of Mollie Anne Skipper, a Minor, who resides at 31013 Elm Drive, Lewes, Delaware 19958.

3. Brenden Joseph McClanahan, now age 22, and Mollie Anne Skipper, now age 12, are the children of Timothy J. McClanahan and are the sole heirs to his estate.

4. On July 11, 2016, Timothy J. McClanahan, then age 46, fell over 100 feet to the ground from an airborne Bell 429 helicopter because the defendants had provided a Hoist Operator Tether with a non-locking connector (carabiner) that became disengaged from the Defendants' safety harness being worn by Mr. McClanahan.

5. As the result of the fall, Timothy J. McClanahan suffered multiple fractures and traumatic injuries which directly resulted in his death.

6. The Estate of Timothy J. McClanahan seeks damages against the Defendants pursuant to the Delaware Survival Statute, 10 Del. C. §3701 et seq.

7. As the result of the death of Timothy J. McClanahan, his children, Brenden McClanahan and Mollie Anne Skipper have suffered mental anguish and grief; they have lost the guidance, services and emotional support of their father; they have lost his financial support; and they have suffered a pecuniary loss.

8. Plaintiff Brenden McClanahan and minor Mollie Anne Skipper, through her mother and Next Friend, Gina Skipper, seek damages pursuant to the Delaware Wrongful Death Statute, 10 Del. C. §3721 et seq.

9. The defendant Priority 1 Air Rescue Operations, Inc. is a Hawaiian Corporation with its corporate address at 1924 Higley Road, Mesa, Arizona 85205 and with its registered agent being Craig Tavares 47-108 Heno PL Kaneohe, HI 96744 [DENIAL OF THIS ALLEGATION BY THE DEFENDANT MUST BE MADE BY AFFIDAVIT PURSUANT TO 10 Del. C. § 3915].

10. The defendant Priority 1 Air Rescue Consulting, Inc. is an Arizona Corporation and its registered agent is Mark Torres, 1924 Higley Road, Mesa, Arizona 85205 [DENIAL OF THIS ALLEGATION BY THE DEFENDANT MUST BE MADE BY AFFIDAVIT PURSUANT TO 10 Del. C. § 3915].

11. The defendant Priority 1 Air Rescue Operations, Arizona LP is an Arizona Limited Partnership and its registered agent is Bob Watson, 21003 Britt Oaks Road, Alvin, Texas. [DENIAL OF THIS ALLEGATION BY THE DEFENDANT MUST BE MADE BY AFFIDAVIT PURSUANT TO 10 Del. C. § 3915].

12. The defendant Priority 1 Air Rescue Operations, (Arizona), LP is an Arizona Foreign Limited Partnership with its corporate address 1924 North Higley Road, Mesa, AZ 85205 and its registered agent is Northwest Registered Agent, LLC, 1001 Bishop Street, Suite 2685A, Honolulu, HI 96813. [DENIAL OF THIS ALLEGATION BY THE DEFENDANT MUST BE MADE BY AFFIDAVIT PURSUANT TO 10 Del. C. § 3915].

13. The defendant Priority 1 Air Rescue Operations Arizona LP is an Louisiana Partnership with the address 2717 Rue Calais Drive, Lake Charles, LA 70605-4041 and its registered agent is Northwest Registered Agent, LLC, 201 Rue Beauregard, Suite 202, Lafayette, LA 70508. [DENIAL OF THIS ALLEGATION BY THE DEFENDANT MUST BE MADE BY AFFIDAVIT PURSUANT TO 10 Del. C. § 3915].

14. Priority 1 Air Rescue Operations, Inc. d/b/a Last Ditch Survival Systems is a corporation with a business address at 1924 North Higley Road, Mesa, AZ 85205-3306.

15. Priority 1 Air Rescue Services, Inc. is a corporation with a business address at 19567 Fraser Highway, Surrey, British Columbia, V3S 9A4 and its registered agent is Craig Tavares, 47-108 Heno Place, Kaneohe, HI 96744.

16. Defendant Priority 1 Air Rescue Operations, Inc., defendant Priority 1 Air Rescue Consulting, Inc., and defendant Priority One Air Rescue Operations, Arizona LP, and Priority 1 Air Rescue Operations (Arizona), LP, and Priority 1 Air Rescue Operations Arizona LP and Priority 1 Air Rescue Operations, Inc d/b/a Last Ditch Survival Systems and Priority 1 Air Rescue Services, Inc. are hereafter collectively referred to as the "Priority 1 Defendants."

17. The Priority 1 Defendants tout that "Priority 1 Air Rescue group provides the most innovative and effective Helicopter Search & Rescue and Tactical



Training and Operational SAR/MEDEVAC aircrew staffing, support, and program implementation capability in the world.

18. The Priority 1 Defendants claim that “We offer true ‘turn-key’ mission capability by providing all related mission role equipment, instructional training, SAR/HEMS aircrew staffing services, certification support, and program implementation.

19. The Priority 1 Defendants provided that the mission role equipment, instructional training, certification and program implementation that directly led to the death of Timothy J. McClanahan.

20. At all times relevant hereto, the Priority 1 Defendants acted through their agents, servants, employees and representatives and regularly conducted business in the State of Delaware.

### **FACTUAL BACKGROUND**

21. On July 11, 2016, and for some time prior thereto, decedent, Timothy J. McClanahan was a volunteer fireman, a member of the Lewes Fire Department, and a member of The Delaware Air Rescue Team (hereinafter “DART”).

22. DART team members are trained in Hoist Operations and as Rescue Specialists; they assist the Delaware State Police Aviation unit when called upon to perform rescue operations throughout the State of Delaware.

23. On July 11, 2016, decedent, Timothy J. McClanahan, Michael MacCoy (another Lewes Fire Department DART Team member), Gregory Cartwright, and pilot Kevin Crossland (both Delaware State Police officers) were participating in training exercises at the Delaware Coastal Airport.

24. The Priority 1 Defendants had designed, configured, recommended and sold to the State of Delaware the safety harness system worn by decedent, Timothy J. McClanahan, including the “Hoist Operator Tether with ‘Kong’” [connector]” (Defendants SKU: 100-S1010-YEL).

25. The Priority 1 Defendants explicitly – and falsely – represented that its “Tether is constructed with a Kong Tango [connector] to allow the user to rapidly, easily and **securely** connect the tether to their harness.” (emphasis added)

26. The Kong Tango connector, manufactured by an Italian carabiner manufacturer, Kong S.P.A., is an aluminum carabiner with a double gate, which means that it can be inadvertently opened during normal usage within a helicopter; Kong S.P.A. also manufactures locking carabiners which could not be inadvertently opened and would have prevented this accident.

27. The Priority 1 Defendants had trained decedent Timothy J. McClanahan and the other crew members on the use of the Hoist Operator Tether with Kong connector.

28. The purpose of the Hoist Operator Tether with Kong connector was to provide a fall restraint and fall protection to the systems operator so that the operator could lean forward onto the helicopter skid without fear of falling from the aircraft; the Tether was attached to the "D" ring on the rear of the Defendants' safety harness by the Kong connector, with the other end being securely attached to a fixed anchor point within the helicopter.

29. The Priority 1 Defendants prepared the pre-flight checklists and provided the training for pre-flight safety inspections to all members of the flight crew; all crew members followed the Defendants' training and completed the Defendants' pre-flight checklists.

30. Prior to assuming the role of systems operator in his final flight, decedent Timothy J. McClanahan adjusted and secured the Defendants' tether first to both his harness and to the anchor point on the airframe of the helicopter.

31. Prior to the helicopter lifting off, decedent, Timothy J. McClanahan was observed by crew member Michael MacCoy fastening his Operator Tether with Kong connector to the lower D ring of the rear of his harness.

32. Prior to the helicopter lifting off, decedent Timothy J. McClanahan was observed performing a safety check whereby he would step out of the aircraft and lean out, thereby verifying that his tether was secured to the rear of his harness and to the anchor.

33. Prior to the helicopter lifting off, Michael MacCoy observed that decedent Timothy J. McClanahan was properly secured and using the Defendants' Tether as recommended by the Defendants.

34. After the helicopter lifted off and reached its target location, the systems operator moved from his seated position aboard the helicopter to a position by the door and hoist where, after receiving permission from the pilot, the operator would stand on the skids of the helicopter to facilitate the lowering of the rescue specialist using the hoist.

35. On July 11, 2016, after decedent Timothy J. McClanahan stepped onto the skid, he plummeted over 100 feet to the ground below, suffering a broken neck and fatal injuries.

36. As he separated from the helicopter and as he plummeted toward the ground, decedent Timothy J. McClanahan was terrified and was aware of his impending death.

37. When Mr. McClanahan struck the ground, he suffered multiple fractures and traumatic injuries which ultimately proved fatal.

38. From the time that he separated from the helicopter until his death, decedent Timothy J. McClanahan consciously suffered severe pain, suffering and mental anguish.

39. After the fatal fall, the harness, with its D ring, was found to be intact; the tether was found to be securely attached to the fixed anchor inside the helicopter; and the Defendants' non-locking "Kong" connector was disengaged from the safety harnesses D ring.

40. As is detailed in this Complaint, the Defendants use of a non-locking connector on its Hoist Operator Tether directly led to the fatal injuries and death of decedent Timothy J. McClanahan.

41. As the defendants knew or reasonably should have known, movement by crew members within the helicopter could and would result in the release or opening of its non-locking connector and the disengaging of their tether from their safety harness; because the tether is attached to the back of the safety harness, the hoist operator would not be aware that the tether was disengaged and the operator would still believe that they were safely protected as expressly warranted by the Defendants.

## **THE DEFENDANTS' "SAFETY EQUIPMENT" AND "SAFETY" TRAINING**

42. Before July 11, 2016, the State of Delaware or a branch thereof (hereinafter referred to as "the State of Delaware") purchased two (2) Federal Aviation Administration (FAA) approved Bell 429 helicopters which were equipped with FAA approved components.

43. Upon information and belief, the State of Delaware relied upon the technical expertise and recommendations from Priority 1 Defendants in making the purchasing decisions to equip its Bell 429 helicopters with THE safest and most reliable FAA approved equipment to ensure the safety of the DART members, Delaware State Police, other rescue personnel and rescue victims during rescue and training operations.

44. Upon information and belief, the State of Delaware relied on upon the technical expertise and recommendations from Priority 1 Defendants in making the purchasing decisions to equip its Bell 429 helicopters with rescue equipment and gear which had received TSO (Technical Standard Order) authorization. A TSO is a minimum performance standard, defined by the Federal Aviation Administration used to evaluate an article.

45. Upon information and belief, the State of Delaware purchased the following equipment which was recommended, represented and sold by Defendants as industry standard equipment which included, but not limited to: a Bell 429 Ceiling Anchoring System, Hoist Operator Tether with Kong Tango Connector, Orca Strap Fall Arresters, Chameleon Rescue Harnesses, Multi-Loop Straps, and Locking Carabiners with Screw and Swivel Mechanism.

46. Upon information and belief, the State of Delaware relied upon the experience and expertise of Priority 1 Defendants who installed the aforesaid



certificates which documented that they had successfully completed the training conducted by the Priority 1 Defendants.

50. Priority 1 Defendants were hired for their purported expertise and were relied upon by the State of Delaware to provide specific training as to how to safely perform hoist and rescue operations.

51. The State of Delaware hired Priority 1 Defendants to provide expertise in making purchasing decisions as to safe and reliable equipment to use for its State Police, DART Member, rescue personnel's as well as accident victims.

52. The State of Delaware trusted that Priority 1 Defendants would provide equipment that complied with Technical Standing Orders (TSOs) and was FAA approved.

53. Upon information and belief, Priority 1 Defendants represented that their training met and exceeded regulatory compliance outlined by FAA 8900.1 and represented that their products and safety systems met the minimum performance standards (TSO) of the FAA.

54. Upon information and belief, the Bell 429 Helicopter, when sold, contained seatbelts which complied with TSO's and were FAA approved.

55. Upon information and belief, the hoist mechanism mounted in the Bell 429 helicopter was FAA approved.



56. Upon information and belief the Orca Fall Arresters sold by Priority 1 Defendants were TSO manufactured and FAA Approved.

57. Upon information and belief the Chameleon Harness sold by Priority 1 Defendants was TSO manufactured and FAA approved.

58. Priority 1 Defendants knew that Chameleon Harness is a part of a safety system and while the Chameleon Harness was TSO manufactured and FAA approved, the Hoist Operator Tether with Kong connector was not FAA approved.

59. Priority 1 Defendants knew that the Kong connector, a component of the Hoist Operator Tether with Kong connector, was not a locking carabiner and was unsafe for its recommended and intended use.

60. The Chameleon Harness, Hoist Operator Tether with Kong connector and anchorage point in the airframe ceiling provided a fall protection safety system which served to provide a fall restraint intended to keep rescue personnel from falling from the aircraft.

61. It is essential that all components of the fall protection safety system meet or exceed industry standards or the system can fail resulting in the catastrophic loss of life of rescue personnel.

62. The Hoist Operator Tether with Kong connector was neither TSO manufactured nor FAA approved and was not suitable for the intended use in the fall

protection safety system which the Delaware State Police relied upon to keep its State Police Troopers, DART volunteers, rescuers and victims safe.

63. Upon information and belief, the Hoist Operator Tether with Kong connector had never been submitted for TSO and FAA approval.

64. Priority 1 Defendants paired a Hoist Operator Tether with Kong connector which was neither TSO manufactured nor FAA approved and was not suitable for the intended use with the FAA approved Chameleon Harness which rendered the safety system unsuitable and unsafe for its intended use.

65. Priority 1 Defendants held themselves out as experts in safety standards and equipment as the State of Delaware did not know that the Hoist Operator Tether with Kong connector were unsafely being introduced into the fall protection safety systems as they trusted that Priority 1 Defendants possessed the skill and expertise to provide equipment consistent with the representations of defendants that it would meet or exceed industry standards.

### **Kong Connector**

66. The Hoist Operator Tether with Kong connector was neither TSO manufactured nor FAA approved and was not suitable for the intended use with the FAA approved Chameleon Harness which rendered the safety system unsuitable and unsafe for its intended use.

67. The Kong Connector is an aluminum alloy carabiner with a double gate system. The double action requires the rear gate to be pressed with the palm while pulling the front gate back with the fingers.

68. The Kong Connector recommended and sold by Priority 1 Defendants is compliant with European Safety Standard, BS EN 12275: Mountaineering Equipment-Connectors-Safety Requirements and Test Methods.

69. The Kong Tango Connector is categorized in BS EN12275 (2013) (E) 3.5 as Klettersteig connector Class K as a self-closing connector, intended to be used primarily for linking a mountaineer to a Klettersteig anchor (via-Ferrata) system.

70. The Kong Connector is not a locking carabiner as defined by ASTM F 1956 3.1.4. A locking carabiner requires a locking mechanism which reduces the possibility of a gate being opened inadvertently. "A locking mechanism requires at least two different consecutive manual actions to open the gate."

71. The Kong Connector does not require two consecutive manual actions to open the front gate.

72. The Hoist Operator Tether with Kong connector was neither TSO manufactured nor FAA approved and was unsafe for its intended and recommended and instructed use and resulted in the death of decedent.

## **COUNT I NEGLIGENCE**

**Estate of Timothy J. McClanahan v. Priority 1 Defendants**

73. Plaintiff incorporates by reference each and every preceding paragraph as though set forth fully at length.

74. The negligence, gross negligence, carelessness, wanton disregard for safety, and recklessness of the Priority 1 Defendants consisted of any or all of the following:

- a. Failure to properly design, test, manufacture, assemble, equip, recommend and/or sell a Hoist Operator Tether with Kong [connector] which was TSO compliant;
- b. Failure to properly design, test, manufacture, assemble, equip, recommend and/or sell a Hoist Operator Tether with Kong [connector] which was FAA approved;
- c. Failure to properly design, test, manufacture, assemble, equip, recommend and/or sell a Hoist Operator Tether with Kong [connector] which was safe for the use specifically designated by Defendants Priority 1;
- d. Marketing and promoting the use of a safety device that unsafe for the use specifically designated by Defendants Priority 1;
- e. Failure to establish any testing or performance guidelines which would meet FAA compliance;
- f. Failure to submit the Hoist Operator Tether with Kong [connector] for TSO approval to insure compliance with industry standard;
- g. Training hoist operators to use a Hoist Operator Tether with Kong [connector] when Priority 1 Defendants knew or should have known that it was not TSO compliant and/or FAA approved and was unsafe for the use specifically designated by Defendants Priority 1;
- h. Failing to properly instruct hoist operators using the Hoist Operator Tether with Kong [connector] that unintended opening of the front gate could occur from rearward minimal contact to the rear gate;
- i. Failing to warn hoist operators using the Hoist Operator Tether with Kong [connector] with Kong [connector] that unintended opening of the front gate could occur from rearward minimal contact to the rear gate;
- j. Failure to promote, sell and/or require the use of a locking carabiner which will not permit unintended opening of the gate; failure to properly design, manufacture, assemble, equip, recommend and/or

sell a Hoist Operator Tether with Kong [connector] with a Locking Carabiner;

- k. Failure to provide adequate training and instruction DART members, Delaware State Police members, and volunteer fireman on the use of the Hoist Operator Tether with Kong [connector];
- l. Failure to provide adequate safety training relative to safety systems including, but not limited to, Checklists; and
- m. Such other acts or omissions that constitute negligence that may become apparent during discovery.

75. Priority 1 Defendants are also responsible for decedent's death under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, the Estate of Timothy J. McClanahan demands judgment against all defendants jointly, severally and individually for the special and general damages, caused by the Defendants' negligence, gross negligence and wanton disregard for safety; Plaintiffs also seek the costs of this action plus pre-judgment and post-judgment interest and other such relief as the Court finds just.

**COUNT II**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**Estate of Timothy J. McClanahan v Priority 1 Defendants**

76. Plaintiffs incorporate by reference each and every preceding paragraph as though set forth fully at length.

77. The aforementioned incident was proximately caused by the actions and/or inactions of defendants, their agents, employees and/or servants in that:

- a. Priority 1 Defendants are merchants with respect to goods of the kind of the Hoist Operator Tether and Connector and Rescue gear in question;
- b. Priority 1 Defendants sold and/or installed the Operators Hoist and Kong [connector] and other equipment in the DSP helicopters in question in a defective and dangerous condition;
- c. The Hoist Operator Tether with Kong [connector] was not fit for the ordinary purpose for which was intended; and
- d. Decedent was a natural person who would have been reasonably expected to use, consume or be affected by the Hoist Operator Tether with Kong [connector] and was injured by the breach of this implied warranty.

78. By selling to the State of Delaware and installing items which were dangerous, defendants, individually and through their agents, employees, and/or servants, breached the implied warranty of merchantability as set forth in 6 Del. C. § 2-314.

WHEREFORE, The Estate of Timothy J. McClanahan demands judgment against all defendants jointly, severally and individually for their special and general damages caused by the breach of implied warranty of merchantability and the costs of this action plus pre-judgment and post-judgment interest and other such relief as the Court finds just.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY**  
**OF FITNESS FOR A PARTICULAR PURPOSE**  
**Estate of Timothy J. McClanahan v Priority 1 Defendants**

79. Plaintiff incorporates by reference each and every preceding paragraph as though set forth fully at length.

80. The aforementioned incident was proximately caused by the actions and/or inactions of defendants, their agents, employees and/or servants in that:

- a. Defendants had reason to know of the particular purpose for which the Hoist Operator Tether with Kong Connector was intended;
- b. Defendants had reason to know that the buyer relied upon defendants' skill and/or judgment when selecting the Hoist Operator Tether with Kong connector and other rescue gear in question for the use they were intended; and
- c. Decedent is a natural person who would have been reasonably expected to use, consume or be affected by the Hoist Operator Tether with Kong connector, and was injured by the breach of this implied warranty.

81. Decedent relied upon defendants' skill and judgment to furnish suitable goods, namely Hoist Operator Tether with Kong connector. By selling a tether and carabiner which was not TSO compliant, FAA approved, suitable or safe for the its intended use, defendants, individually and through their agents, employees, and/or servants, breached the implied warranty of fitness for a particular purpose as set forth in 6 Del. C. §2-315.

WHEREFORE, the Estate of Timothy J. McClanahan demands judgment against all defendants jointly, severally and individually for their special and general damages, including pain and suffering, damages caused by the breach of warranty of fitness for a particular purpose and the costs of this action plus pre-judgment and post-judgment interest and other such relief as the Court finds just.

**COUNT IV**  
**BREACH OF EXPRESS WARRANTY**  
**Estate of Timothy J McClanahan v Priority 1 Defendants**

82. Plaintiff incorporates by reference each and every preceding paragraph as though set forth fully at length.

83. The aforementioned incident was proximately caused by the actions and/or inactions of defendants, their agents, employees and/or servants in that:

- a. Defendants expressly warranted, described or otherwise represented that the Hoist Operator Tether with Kong connector, the harness and other rescue equipment were all industry standard and compliant;
- b. Defendants sold and installed the rescue equipment including but not limited to the Hoist Operator Tether with Kong connector in question in a defective and dangerous condition in violation of those express warranties, descriptions and/or other representations when they knew or should have known of the dangers to consumers, ultimate users and/or individuals affected by their use, such as plaintiff; and
- c. The defective and dangerous nature of the Hoist Operator Tether with Kong connector was a breach of express warranties and was the proximate cause of plaintiff's injuries and resulting damages.

84. Priority 1 Defendants, individually and through their agents, employees, and/or servants, through affirmations of fact as to the quality of service created an express warranty pursuant to 6 Del. C. §2-313(1)(a) that the Hoist Operator Tether with Kong connector which was purchased by the State of Delaware was suitable, safe for its intended use, TSO manufactured and FAA approved. Defendants, individually and through their agents, employees, and/or servants, breached that warranty by recommending and selling to the State of Delaware rescue equipment which was unsafe and not suitable for its intended use.



WHEREFORE, the Estate of Timothy J. McClanahan demands judgment against all defendants jointly, severally and individually for their special and general damages caused by the breach of express warranty and all other warranties described herein, and the costs of this action plus pre-judgment and post-judgment interest and other such relief as the Court finds just.

**COUNT V**  
**STRICT LIABILITY**  
**Estate of Timothy J McClanahan v Priority 1 Defendants**

85. Plaintiffs incorporate by reference each and every preceding paragraph as though set forth fully at length.

86. At all times material hereto, defendants were engaged in the business of designing, manufacturing selling, labeling, marketing, distributing, and/or placing into the stream of commerce Hoist Operator Tethers with Kong [connectors], such as the ones in this case, for the ultimate use of customers and/or ultimate users and more specifically, defendants did so design, manufacture, sell, label, market, distribute, and/or place into the stream of commerce the Hoist Operator Tether with Kong connector in question which resulted in decedent's injuries and death and plaintiffs' damages. The Hoist Operator Tether with Kong connector did not go through any substantial changes and/or alterations prior to the incident in question.

87. Defendants are liable under the doctrine of strict liability in tort in that the Hoist Operator Tether with Kong connector in question were defective and/or unreasonably dangerous to the use of the consumers, ultimate users and/or those affected by their use at the time they were placed into the stream of commerce by defendants in one and/or more of the following particulars, each when taken separately and/or collectively was and/or, were a producing and/or proximate cause of plaintiff's resulting injuries damages:

- a. The Hoist Operator Tether with Kong connector were designed and manufactured in such a way that they increased the likelihood of failure during their use and cause serious injuries to the consumer, ultimate user and/or individuals affected by their use during reasonable use when operated in a foreseeable fashion;
- b. Although defendants knew and/or by the application of reasonably developed human foresight should have known that the defective nature of the Hoist Operator Tether with Kong connector in question could and did cause serious injuries in the course of their foreseeable use, defendants failed to design, manufacture, adjust and/or modify the Hoist Operator Tether with Kong connector in order to prevent serious personal injuries to consumers, ultimate users and/or individuals affected by their use; and,
- c. Although defendants knew and/or by the application of reasonably developed human foresight should have known that the Hoist Operator Tether with Kong connector could and did cause serious injuries in the course of their foreseeable use, defendants failed to adequately and/or properly warn of the aforementioned hazards.

88. The aforementioned incident was caused by the inherently defective nature of the Hoist Operator Tether with Kong connector in that there were no protective measures, including the use of labeling and/or other warnings, which were taken to ensure that an operator or other reasonably anticipated consumer, ultimate

user and/or individual affected by use of the Hoist Operator Tether with Kong connector would not be injured during reasonable usage for the purposes for which they were intended.

89. The aforementioned defects were unreasonably dangerous to any consumer, ultimate user and/or individuals affected by the use of the Hoist Operator Tether with Kong connector.

90. The aforementioned incident was proximately caused by the actions and/or inactions of defendants, their agents, employees and/or servants in that:

- a. They engaged in the business of selling and/or distributing products such as the Hoist Operator Tether with Kong connector;
- b. They sold and/or distributed the products in a defective condition which were unreasonably dangerous to a reasonably foreseeable consumer, ultimate user and/or individuals affected by their use, including plaintiff's decedent; and
- c. They knew or should have known that the defective and unreasonably dangerous products would and did reach a consumer, ultimate user and/or would impact individuals by its use, including plaintiff's decedent.

91. Each and all of the foregoing acts and omissions, taken singularly and/or collectively, were a proximate cause of decedent's resulting injuries and plaintiff's damages.

WHEREFORE, the Estate of Timothy J. McClanahan demands judgment against defendants jointly, severally and individually, for their special and general damages, including pain and suffering, the costs of this action plus pre-judgment and post-judgment interest and other such relief as the Court finds just.

**Count VI**  
**Wrongful Death**  
**Brenden McClanahan and Mollie Anne Skipper v Priority 1 Defendants**

92. Plaintiffs reallege and incorporate by reference each and every preceding paragraph and each and every preceding Count as though set forth fully at length.

93. Plaintiff, Brenden McClanahan, and minor Mollie Anne Skipper, seek damages pursuant to the Delaware Wrongful Death Statute, 10 Del. C. §3721 et seq.

94. Decedent, Timothy J. McClanahan, is survived by his son, Brenden McClanahan, and his minor daughter, Mollie Anne Skipper, who are entitled to damages for his death pursuant to 10 Del. C. §3724(a).

95. As a result of the death of Timothy J. McClanahan, plaintiff, Brenden McClanahan and minor plaintiff, Mollie Anne Skipper, suffered grievous anguish, loss of contributions for support, loss of services, and loss of pecuniary benefits in the amount of the present value of the estate, which his children would have accumulated had he lived his full life expectancy.

WHEREFORE, plaintiffs, Brenden McClanahan and Mollie Anne Skipper, demand judgment be entered against the defendants jointly and severally for compensatory and special damages and for their wrongful acts which resulted in the death of Timothy J. McClanahan and seek any and all damages pursuant to 10 Del. C. §3724 et seq., including, but not limited to all special damages and compensatory damages plus just compensation for the loss of his comfort, affection, and

companionship and for mental anguish resulting from Timothy J. McClanahan's death, and for permanent and emotional damage resulting there from and any other damages permitted under 10 Del. C. §3721 et seq. plus the cost of bringing this action including pre-judgment and post-judgment interest, along with any additional relief that this Court may deem proper.

**COUNT VII –  
SURVIVAL ACTION  
Estate of Timothy McClanahan and Mollie Anne Skipper v Priority 1  
Defendants**

96. Plaintiffs reallege and incorporate by reference each and every preceding paragraph as though set forth fully at length. An Estate has been opened on behalf of the decedent, Timothy J. McClanahan.

97. Plaintiffs, Brenden McClanahan and minor, Mollie Anne Skipper bring Count VII of this Complaint pursuant to the Delaware Survival Statute, 10 Del. C. §3701 et seq.

98. On July 11, 2016 Timothy J. McClanahan suffered severe personal injuries as a direct and proximate result of the negligence and/or willful, wanton, reckless and/or felonious conduct of the defendants.

99. These severe personal injuries resulted in the subsequent death of Timothy J. McClanahan on July 11, 2016.

100. Pursuant to 10 Del. C. §3701, plaintiffs Brenden McClanahan and

Mollie Anne McClanahan are entitled to damages for the conscious pain and suffering, and medical expenses of Timothy J. McClanahan from the time of his injuries on July 11, 2016 to the time of his death on July 11, 2016.

WHEREFORE, the plaintiffs demand judgment be entered against the defendants jointly and severally, for conscious pain and suffering, all special damages, compensatory damages plus the cost of bringing this action, including pre-judgment and post-judgment interest, along with any additional relief that this Court may deem proper.

DOROSHOW, PASQUALE  
KRAWITZ & BHAYA

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