

IN THE CIRCUIT COURT OF GARLAND COUNTY, ARKANSAS
CIVIL DIVISION

THESIA GRIFFIN, Individually and as Parent and
Next Friend of BROOKE GRIFFIN, a Minor

PLAINTIFF

VS.

CASE NO. CV _____

MID-AMERICA SCIENCE MUSEUM, THE CINCINNATI
INSURANCE COMPANY,
WAL-MART, INC., GOODMARK USA, INC.,
AND JOHN DOE

DEFENDANTS

COMPLAINT

COMES NOW Plaintiff, Thesia Griffin, Individually and as Parent and Next
Friend of Brooke Griffin, A Minor, by and through her attorney, Wendy R. Howerton,
and for her Complaint states and alleges as follows:

Parties, Jurisdiction, and Venue

1. Plaintiff Thesia Griffin, Individually and as Parent and Next Friend of Brooke
Griffin, A Minor, is a resident of Hot Springs, Garland County, Arkansas. Brooke Griffin
resides with her mother, Thesia Griffin, and has at all times relevant herein.

2. The acts, occurrences and omissions that give rise to Plaintiffs' cause of action
occurred in Hot Springs, Garland County, Arkansas.

3. Defendant Mid-America Science Museum (herein referred to as "Mid-
America") is an Arkansas non-profit corporation with its principal place of business in Hot
Springs, Garland County, Arkansas. Mid-America operates to foster children's interest in
science through a hands-on approach. Mid-America's registered agent is Diane LaFollette,
500 Mid America Blvd., Hot Springs, AR 71913.

4. Defendant The Cincinnati Insurance Company provided liability insurance
coverage for Mid-America at the time in question and is therefore liable for damages

caused by Mid-America and its employees and agents under the Charitable Immunity Doctrine, A.C.A §23-79-210. Defendant's registered agent is Robert Henry, Barber Law Firm, 425 W. Capitol Avenue, Suite 3400, Little Rock, AR 72201.

5. Defendant Wal-Mart, Inc., (hereinafter "Wal-Mart") is a Delaware corporation with its principal place of business in Bentonville, Arkansas. Wal-Mart Supercenter located at 1601 Albert Pike Rd., Hot Springs, Arkansas 71913, sold the dangerous item at issue in this action, *i.e.* a flammable youth Halloween costume, to Plaintiff herein. Registered agent for Wal-Mart is The Corporation Company, 124 West Capitol Ave. Ste. 1900, Little Rock, AR 72201.

6. Defendant Goodmark USA, Inc. ("Goodmark") is upon reasonable belief the manufacturer and distributor of the youth Halloween costume which is the subject of this litigation. Goodmark is a Delaware corporation doing business in Arkansas with its principal place of business located at 127 E. Boca Raton Road, Boca Raton, FL 33432. Its agents for service of process are listed as "Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801," and "The Corporation Company, 124 W. Capitol Ave., Suite 1900, Little Rock, AR 72201."

7. Defendant John Doe is a broker/vendor that supplies Goodmark Halloween costumes to Wal-Mart stores. Defendant Doe does business in Hot Springs, Garland County, Arkansas.

8. This Court has jurisdiction of the parties and subject matter of this action. Venue is proper in this Court.

Factual Background

9. On or about October 29, 2015, Plaintiff, Thesia Griffin purchased a “Queen of Hearts” children’s Halloween costume for her minor child, Brooke Griffin, from Wal-Mart Supercenter in Hot Springs, Garland County Arkansas, at 1601 Albert Pike Road.

10. The costume was a youth size 8-10 made by Goodmark USA, Inc. and/or John Doe and provided to Wal-Mart by same.

11. The costume was packaged in a Wal-Mart package and sold by Wal-Mart for \$27.34 with a Wal-Mart Stores SKU number on the package.

12. Said costume warned of choking hazards for children under three (3) years of age but failed to warn of any flammability hazards. Said costume purported to be “ideal for costume parties” for children.

13. Thesia Griffin and Brooke Griffin had a family membership to the Mid-America Science Museum in 2015. As a part of that membership they were invited to go to the Mid-America Science Museum “Member’s Night Halloween Costume Party” (herein referred to as “Costume Party”) on or about the evening of October 30, 2015, which they attended.

14. Mid-America Science Museum advertised music, sweets for kids and “fun interactive science activities” for the Costume Party.

15. On the evening of the Costume Party, one of the “interactive science activities” was the “fire tornado” performed by an agent of Mid-America (“Employee”).

16. At a display table, Mid-America set up a “fire tornado” science experiment where Employee would light lighter fluid or gas on fire and then begin to spin the bowl containing the flammable substance, to create a flame inside a mesh cylinder shaped container.

17. Employee would spin the bowl creating a “fire tornado.” This process was repeated over and over to create a bigger tornado. The fire tornado would rise a few feet tall from the table, and at some points would waft up to several feet higher.

18. Brooke Griffin and a friend of hers watched the experiment briefly. They then moved on to the other end of the table where her mother stood watching.

19. Brook Griffin continued on toward her mother, putting her many feet away from the fire experiment.

20. Employee raised the lid to light the tornado again, and Brooke was suddenly engulfed with flames.

21. Thesia Griffin was watching as this occurred and watched her daughter become engulfed by flames.

22. Brooke Griffin began to scream as her hair and costume caught fire immediately melting and sticking to her flesh in seconds.

23. Brooke Griffin ran toward her mother, Thesia Griffin, terrified and screaming in severe pain as Employee ran out of the room along with the other staff and some bystanders.

24. There was no fire extinguisher, safety procedure or protocol put into place, no fire blanket to help smother any flames in case of an emergency, no safety measures at all taken or attempted. Mid-America Employee and staff simply fled the room and left Brooke to burn.

25. Thesia began running and screaming “put her out, put her out!” expecting Employee or staff to use a fire extinguisher. No one came to assist or tried to put her out.

26. Thesia ran toward Brooke screaming and tried to put the flames out as Brook was thrashing and screaming from the pain.

27. Thesia finally threw Brook to the ground and began to beat the flames out with her bare hands as Employee and staff did nothing to assist.

28. Thesia ripped the smoldering costume from Brooke's body and relocated her to a bench. Employee and staff did nothing to assist. Thesia yelled "call 911" and a witness is believed to have called for help.

29. A witness who happened to be an RN helped to try to calm Brooke while Thesia would blow on her burns to try to cool them and give relief. Employee and staff did nothing to assist.

30. A police officer and first responder arrived to assess Brooke and ensure that her throat and nose were not coated or blocked with smoke and that she could breathe appropriately before the ambulance's arrival.

31. The ambulance finally arrived and loaded Brooke onto the gurney transporting Brooke Griffin to the emergency room at CHI St. Vincent's Hospital in Hot Springs, Arkansas.

32. Brooke arrived at the ER and she was delivered to a trauma room.

33. Brooke was administered approximately 10mg of morphine to get her pain under control.

34. Brooke was treated for first, second and third degree burns throughout her body, with burns said to cover 20% of her body. She was then transferred and transported to Arkansas Children's Hospital where she remained until the afternoon of October 31, 2015.

35. Brooke was given morphine, antibiotics and other medication intravenously, during her stay at the hospital. Her wounds were debrided and changed repeatedly. After returning home, Brooke's bandages were changed repeatedly and periodically for months causing tremendous pain each time they were ripped off, her wounds cleaned, debrided, treated, and re-bandaged.

36. Brooke's vitals were checked and charted around the clock during her stay at the hospital requiring her to be awakened and causing additional pain, frustration and irritation when she was moved.

37. Brooke suffered nightmares from the incident for months after the fire and still does from time to time.

38. Brooke attended counseling due to the mental trauma and PTSD sustained after being set on fire. She has attended counseling with the school where she attends and with a private counselor.

39. Brooke Griffin suffered physical pain and suffering from the injuries caused by the burns and will suffer in the future.

40. Brooke Griffin suffered losses from medical treatments to alleviate her pain and suffering caused by the damages that occurred from the burns.

41. Brooke Griffin missed weeks of school due to not being able to attend while her bandages were still being treated and due to the mental trauma sustained from the fire.

42. Brooke was not able to leave her home for weeks due to the injuries from the fire and the risk of infection. Brooke was not able to bathe or care for herself during that time.

43. Months later, Brooke Griffin went on a field trip to the Museum of Discovery in Little Rock where they hosted a fire tornado, much to Brooke's horror, where Brooke was forced to remain in attendance—subjecting her to further suffering. Brooke was brought to tears and began to suffer from severe fear, panic and anxiety while being forced to endure sitting through the fire show at the Museum of Discovery.

44. Brooke's physical injuries are still visible and will be permanently, leaving permanent scarring and discoloration.

45. Brooke Griffin suffered and will suffer: loss of enjoyment of life, mental anguish, reduced earning capacity, pain and suffering, medical expenses, permanent scarring, etc.;

46. Thesia Griffin's hands were treated due to the burns she sustained while putting her daughter's flaming body out.

47. Thesia's burns were fortunately superficial and able to be treated with a burn ointment.

48. Thesia Griffin has suffered repeated nightmares of watching her daughter catch on fire and burn before her eyes.

49. Thesia Griffin has had to nurse Brooke Griffin back to health in washing, and rebandaging her daughters burns while Brooke was at home for nearly a month. Brooke would scream incessantly during the showering and bandaging process due to the excessive pain caused from the disinfecting, continued debriding and bandaging.

50. Thesia Griffin had to miss multiple days of school to care for her daughter, as Brooke could not be left alone due to the mental and physical trauma she suffered.

51. Thesia Griffin has suffered mental anguish.

52. Thesia Griffin suffered and will suffer future medical expenses on behalf of Brooke and herself and pain and suffering and mental anguish.

53. Thesia Griffin has suffered and will suffer mental health expenses due to the counseling necessitated from the fire for both Thesia and Brooke Griffin.

COUNT I—Strict Liability

54. Plaintiff reasserts the allegations set forth in paragraphs 1 through 53 above and incorporates the same herein by reference.

55. Defendants Wal-Mart, Goodmark, and John Doe were engaged in the business of manufacturing or assembling or selling or leasing or distributing a product, i.e. the Halloween costume described above.

56. Defendants Wal-Mart, Goodmark, and John Doe manufactured, assembled, and sold the above-described Halloween costume in a defective condition which rendered it unreasonably dangerous.

57. As a result of these Defendants' actions, Thesia Griffin and Brooke Griffin sustained damages. More specifically, they sustained, and are entitled to recover damages for the following:

- A. The reasonable expense of any necessary medical care, treatment and services received, and the value of such expense reasonably certain to be required in the future;
- B. Pain and suffering and mental anguish experienced in the past and reasonably certain to be experienced in the future;
- C. Scars and disfigurement and visible results of injury;
- D. Loss of earnings and earning capacity; and

E. Any and all other elements of damages to which they may prove themselves entitled.

58. The defective condition of the costume was the proximate cause of the damages sustained by Thesia Griffin and Brooke Griffin.

COUNT II—Breach of Warranty

59. Plaintiff reasserts the allegations set forth in paragraphs 1 through 53 above and incorporates the same herein by reference.

60. Defendants Goodmark, Wal-Mart and John Doe were engaged in the business of manufacturing or assembling or selling or leasing or distributing a product, i.e. the Halloween costume described above.

61. Defendants Goodmark, Wal-Mart and John Doe had a duty to consumers to not put hazardous products in the stream of commerce, especially items that target children.

62. Defendants failed to exercise reasonable or ordinary care in manufacturing a child's Halloween costume by failing to either use flame retardant or flame-resistant material or give any warning as to its flammability, or to instruct on the use of the product, placing Brooke and Thesia Griffin in unreasonable risk of harm.

63. Defendants have breached the implied warranty of merchantability of their product, their implied warranty of fitness of the product for the purpose it was created, and their express warranties of such.

64. As a result of these Defendants' actions, Thesia Griffin and Brooke Griffin sustained damages. More specifically, they sustained, and are entitled to recover damages for the following:

- A. The reasonable expense of any necessary medical care, treatment and services received, and the value of such expense reasonably certain to be required in the future;
- B. Pain and suffering and mental anguish experienced in the past and reasonably certain to be experienced in the future;
- C. Scars and disfigurement and visible results of injury;
- D. Loss of earnings and earning capacity; and
- E. Any and all other elements of damages to which they may prove themselves entitled.

65. Defendants' failure to exercise reasonable or ordinary care in manufacturing and their acts of breaching their duties and warranties to Thesia and Brooke Griffin was the cause in fact and proximate cause of the damages sustained by Thesia and Brooke Griffin.

COUNT III—Negligence

66. Plaintiff reasserts the allegations set forth in paragraphs 1 through 53 above and incorporates the same herein by reference.

67. Defendant Mid-America owed Thesia Griffin and Brooke Griffin the duty of using reasonable care to keep its premises in a safe condition and prevent the injuries they sustained while attending the Costume Party to which Mid-America invited them.

68. Defendant Mid-America was negligent in that it breached its duty to Thesia Griffin and Brooke Griffin by failing to use reasonable care under the circumstances to keep its premises in a safe condition and prevent the injuries they sustained while attending the Costume Party. More specifically, Mid-America was negligent in the following ways:

- A. Defendants were negligent in implementing the “fire tornado” science experiment by failing to provide any safety structure, procedures, protocol, or safety equipment before exposing a room full of people to gas fumes being ignited in open air. These negligent acts were the cause in fact and proximate cause of Thesia and Brooke Griffin’s injuries.
- B. Defendant’s negligent acts of igniting lighter fluid in a closed room with people in the room was the cause in fact and proximate cause of the fire that caused Brooke Griffin’s injuries.
- C. Defendant’s negligent act of failing to have a fire extinguisher in the building was the cause in fact of the nature and extent and proximate cause of the nature and extent of Brooke and Thesia Griffin’s injuries.

69. As a result of Mid-America’s negligence, Thesia Griffin and Brooke Griffin sustained damages. More specifically, Thesia Griffin and Brooke Griffin are entitled to recover damages for the following:

- D. The reasonable expense of any necessary medical care, treatment and services received, and the value of such expense reasonably certain to be required in the
- E. future;
- F. Pain and suffering and mental anguish experienced in the past and reasonably certain to be experienced in the future;
- G. Scars and disfigurement and visible results of injury;
- H. Loss of earnings and earning capacity; and
- I. Any and all other elements of damages to which they may prove themselves entitled.

70. Defendant's negligent acts were the cause in fact and proximate cause of the damages sustained by Thesia and Brooke Griffin.

71. Arkansas Secretary of State's website lists Mid-America Science Museum as a domestic nonprofit corporation. Plaintiff reasonably believes that Defendant The Cincinnati Insurance Company is Mid-America's liability insurance carrier. As such, The Cincinnati Insurance Company is a proper defendant pursuant to Ark. Code Ann. § 23-79-210.

72. Trial by Jury is demanded.

WHEREFORE, PREMISES CONSIDERED, Thesia Griffin Individually and as Parent and Next Friend of Brooke Griffin, a minor, prays that this Court find Defendants liable and award her money damages for medical loss, pain and suffering, permanent scars or disfigurement, inconvenience, mental anguish, loss of enjoyment of life, lost wages, reasonably certain future medicals, future wage loss and impaired earning capacity, future loss of enjoyment of life and future mental anguish, her costs, and for any and all other relief to which she may prove herself entitled.

RESPECTFULLY SUBMITTED,
Thesia Griffin, Parent and Next
Friend and Legal Guardian of
Brooke Griffin, a minor, and Thesia
Griffin Individually

By: _____

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