

STATE OF INDIANA            )       IN THE MARION COUNTY SUPERIOR COURT  
                                      ) SS:  
COUNTY OF MARION        )       CAUSE NO.:

GREG KISHBAUGH, Individually and as        )  
Personal Representative of the                )  
ESTATE OF DONNA KISHBAUGH, Deceased       )

Plaintiff,   )

v.    )

**JURY TRIAL DEMANDED**

BOTTOMS UP SCUBA INDY LLC,                 )  
BOTTOMS UP SCUBA, LLC, and                 )  
HARVEST TIME, INC. d/b/a                     )  
HIDDEN PARADISE CAMPGROUND,               )

Defendants.                                        )

**COMPLAINT FOR WRONGFUL DEATH DAMAGES**

Plaintiff, Greg Kishbaugh, Individually and as Personal Representative of the Estate of Donna Kishbaugh, by counsel, Jason R. Reese, files his *Complaint for Wrongful Death Damages* against the Defendants, Bottoms Up Scuba Indy LLC, Bottoms Up Scuba, LLC and Harvest Time, Inc. d/b/a Hidden Paradise Campground and, in support of same, alleges and states as follows:

1. Plaintiff, Greg Kishbaugh, is the surviving lawful husband of Donna Kishbaugh, now deceased, and is a citizen of the State of Indiana, presently domiciled in Westfield, Hamilton County, Indiana.

2. Donna Kishbaugh died on October 12, 2020 and was survived by her husband of 29 years, Greg, and two (2) biological adult children, Dagan, a 27-year-old son, and Bronwyn, a 21-year-old daughter.

3. At the time of her death, Donna Kishbaugh was a resident of Westfield, Indiana in Hamilton County.

4. At all times relevant hereto, Defendants, Bottoms Up Scuba Indy LLC and Bottoms Up Scuba, LLC (hereafter referred to as “Bottoms Up”), is and was an Indiana corporation with its principal place of business located at its dive shop located at 8915 South Keystone Avenue, Suite A, in Indianapolis, Marion County, Indiana, doing business for profit in the State of Indiana, offering scuba diving training certification services to the public.

5. At all times relevant hereto, Defendant, Harvest Time, Inc. d/b/a Hidden Paradise Campground (hereafter referred to as “Hidden Paradise”), is and was an Indiana corporation with its principal place of business located in St. Paul, Decatur County, Indiana, doing business for profit in the State of Indiana.

6. At all times relevant hereto, Defendant Bottoms Up entered into a written contractual agreement with Plaintiff and his wife, Donna, and their two adult children, which was duly executed at its dive shop in Marion County, Indiana, whereby Bottoms Up was paid \$1,000 to provide scuba diving training so that the family could obtain certification by Bottoms Up staff and instructors.

7. At all times relevant hereto, Defendant Bottoms Up represented on its corporate website: “We are a Dive Shop and Scuba instruction facility with multiple locations in Indiana and Florida. We teach Scuba Diving classes weekly. At Bottoms Up Scuba, you are part of the family! We offer all-inclusive diver courses which means there are no hidden costs or equipment you have to buy! We give you everything you will need to be a Certified Diver and will work at your pace to make sure you are comfortable.”

8. In addition, as it related specifically to identify its scuba diving staff, Defendant Bottoms Up’s corporate website represented that it employed Clay St. John as a “Course Instructor / Indy Shop Manager”.

9. At all times relevant hereto, Defendant Bottoms Up's scuba diving instructor, Clay St. John, was acting as an agent and/or in the course and scope of his employment with one or more of the Defendants when he was involved in a scuba diving training incident that proximately caused the tragic drowning death of Donna Kishbaugh.

10. At all times relevant hereto, Defendant Hidden Paradise's corporate website represented that: "Scuba Diving in the 15 acre, spring fed, Dream Lake is a great experience!"

11. In addition, as it related specifically to its scuba diving offerings that required people to pay \$20 per day for access, Defendant Hidden Paradise's website stated: "Certified Divers are required to present their c-card when registering. \*All divers must be certified.\* For your safety, all Divers are required to have a dive buddy. Divers must be out of the water by midnight. The Quarry is open 365 days per year. Experience our paradise from below. Dream lake is a 15 acre spring fed rock quarry with an average depth of 25 feet. The deepest point in Dream Lake is a sump hole 18 feet in diameter and drops to 35 feet in depth. The visibility will vary but generally you will see 7-10 foot visibility and occasionally up to 20-25 foot."

12. On November 30, 2020, in the Hamilton County Superior Court under Cause Number 29-D01-2011-EU-536, Greg Kishbaugh was duly appointed as the personal representative of the Estate of Donna Kishbaugh for the limited purpose of pursuing this wrongful death action.

13. The diver-training incident that forms the basis of this action occurred in St. Paul, Indiana, in Decatur County, in the "Dream Lake" water-filled quarry located on the premises of Hidden Paradise Campground.

14. On Monday, October 12, 2020, Donna Kishbaugh was at the lake to complete the final skills test in order to obtain her scuba diving certification.

15. On said date, Donna paid the required \$20 diving fee to Hidden Paradise and then went into the water for training with her instructor from Bottoms Up, Clay St. John.

16. During the training process, and while in the water, Donna mentioned having difficulty descending in the water, at which point Clay St. John negligently switched his buoyancy control device “BCD” and gave it to Donna so she could use his.

17. Due to Clay St. John’s negligence, Donna descended under the water and was unable to ascend causing her tragic drowning death.

18. Donna’s husband, Greg was watching the entire episode while standing on the dock and personally witnessed the tragedy unfold.

19. Plaintiff, Greg Kishbaugh, suffered extreme emotional anguish and distress as a direct result of witnessing his wife’s death.

20. Defendant Bottoms Up is liable for the actions and negligence of the instructor, Clay St. John, under the doctrine of *respondeat superior* and pursuant to the agency relationship that existed as Mr. St. John was acting as their agent, servant or representative.

21. As the premises owner, maintainer, controller and operator of the quarry lake, Defendant Hidden Paradise owed Donna Kishbaugh, as a public invitee, a duty to exercise reasonable care in maintaining its premises in a safe condition and warning the public of unsafe conditions, including but not limited to, dangerously murky water that restricted visibility, a lack of equipment to assist inexperienced scuba divers, and a lack of safety or rescue equipment.

22. Defendants were negligent in their operation, management, supervision, and/or control of the lake quarry and the training process.

23. Defendants each breached their paid contractual agreements with the Kishbaugh family members and failed to abide by their terms and conditions.

24. As a direct and proximate result of Defendants' negligence, Donna Kishbaugh tragically drown and died.

25. As a direct and proximate result of Defendants' negligence, Plaintiff Greg Kishbaugh has suffered extreme emotional distress which is permanent in nature.

26. As a direct and proximate result of Defendants' negligence, Plaintiff seeks all damages permitted by the Indiana Wrongful Death Act on behalf of the Estate of Donna Kishbaugh and her family, including all intangible damages, loss of past and future income, loss of love, care and affection, last medical, funeral and burial expenses, plus all costs and fees associated with administering the Estate.

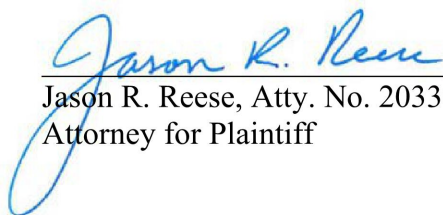
27. As a direct and proximate result of the Defendants' negligence, Plaintiff, Greg Kishbaugh, the lawful husband of Donna Kishbaugh, sustained a lifetime loss of his wife's love, care, and affection, as well as a substantial loss of income and emotional and financial support.

28. As a direct and proximate result of the Defendants' negligence, Plaintiff, Greg Kishbaugh, as Personal Representative of the Estate of Donna Kishbaugh, has been otherwise damaged and hereby demands all damages pursuant to Indiana law.

WHEREFORE, the Plaintiff, Greg Kishbaugh, Individually and as Personal Representative of the Estate of Donna Kishbaugh, prays for judgment against Defendants in an amount commensurate with the Estate's damages, for the costs of this action, for pre-judgment interest, for trial by jury, and for all other just and proper relief in the premises.

Respectfully submitted,

**WAGNER REESE, LLP**

  
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Jason R. Reese, Atty. No. 20330-64  
Attorney for Plaintiff

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