

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

CLINT BENCH,  
Plaintiff,

§

§ CIVIL ACTION NO.

§

v.

§

§

SIX FLAGS ENTERTAINMENT  
CORPORATION,  
Defendant.

§

Complaint for ADA Discrimination

§

§ JURY DEMANDED

**DEFENDANTS' ORIGINAL COMPLAINT**

COMES NOW, Plaintiff CLINT BENCH and complains of Defendants SIX FLAGS ENTERTAINMENT CORPORATION ("Defendant") as follows:

**I. PARTIES**

1. Plaintiff CLINT BENCH is an individual who currently resides in Weatherford, Parker County, Texas. He can be served through his attorneys, McCathern, PLLC, 3710 Rawlins Street, Suite 1600, Dallas, Texas 75219.

2. Defendant SIX FLAGS ENTERTAINMENT CORPORATION is a Delaware Corporation with its principal place of business in Tarrant County, Texas. It can be served through its registered agent, Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218.

**II. JURISDICTION AND VENUE**

3. This Court has jurisdiction over the claims herein under 28 U.S.C. § 1331, and jurisdiction to grant injunctive relief under 42 U.S.C. §12188. This Court has supplemental jurisdiction over the state law claims herein under 28 U.S.C. § 1367.

4. Venue is proper in this Court under 28 U.S.C. 1391(b)(1) and (2), because Defendant resides in Grand Prairie, Texas, and also because a substantial part of the events or omissions giving rise to this claim occurred in Arlington, Texas.

### **III. FACTS**

#### **A. About Clint Bench**

5. Clint Bench was born with a congenital abnormality. During development, his arms stopped forming at the distal ends of the radius and ulna. As such, he has no fully formed hands. Nevertheless, Mr. Bench has adapted to his condition and done his best to lead a normal life. Despite his disability, he went to college, earned a degree, and got married. He now has a full-time job and is raising two beautiful children. He has lived his entire life with this condition and has never needed or even desired the assistance of prosthetics.

6. Mr. Bench is a physically fit, healthy adult with great upper body strength. He can perform all manners of activities, including activities that one would normally assume would require the use of hands. For example, he can do pull-ups and he enjoys such activities as water skiing and mountain biking. Mr. Bench also has surprising manual dexterity. He can write, type, tie his shoes, use a cell telephone, and fire a gun. Although there may be some tasks that Mr. Bench would have more difficulty in performing than a person with natural hands, he is just as capable as most at performing such tasks.

#### **B. Defendant and its Policies**

7. Defendant is a publicly traded company incorporated in Delaware and headquartered in Grand Prairie, Texas. According to its website, Defendant owns and operates 18 parks throughout North America. In 2011, Defendant served about 24 million guests and earned over \$1 Billion in revenue.

8. Defendant's oldest amusement park is located in Arlington, Texas. It is called "Six Flags Over Texas." Six Flags Over Texas has over 40 rides, including trains, carousels, and roller coasters.

9. Defendant maintains two policies relevant to this lawsuit. One policy governs the safety requirements of each of its rides at Six Flags Over Texas. This policy is available to Defendant's guests in a pamphlet titled *Guide to Rides & Attractions* (the "Guide"). The Guide lists the basic safety requirements and features for each of the rides at the park. For example, a ride may require upper body control and restraints to be worn. Defendant maintains different versions of the Guide for each of its amusement parks, as the rides differ from park to park. On information and belief, Defendant amends the Guide from time to time. A copy of the Guide that was in place at the time of the incident (the "Old Guide") is attached hereto as Exhibit A. A copy of the current version of the Guide (the "New Guide") is attached hereto as Exhibit B.

10. The second relevant policy provides disabled persons with special ride access. Specifically, this policy allows disabled persons, along with three of their companions, to skip to the front of the line. This policy is available to guests in a pamphlet titled *Ride Access Schedule* (the "Schedule"), a copy of which is attached hereto as Exhibit C. In addition to describing policy, the Schedule contains additional safety requirements for seven "High Thrill" rides. Common to each of these seven rides is the requirement that the rider must have at least one naturally formed hand capable of grasping. The rides listed on the Schedule are:

- Batman – The Ride;
- Flashback;
- Judge Roy Scream;
- La Vibora;
- Mine Train;
- Titan; and
- Texas Giant.

11. All seven of these rides are also listed on the Old Guide, but the requirement of a naturally formed hand is not stated for any of them. Rather, the Old Guide simply stated “must be able to grasp” or “must be able to walk unassisted” on some of the above rides.

**C. The Aquaman Splashdown Ride**

12. The ride at issue here is called Aquaman Splashdown (“Aquaman”). It is a water ride. To ride Aquaman, guests board a boat at ground level and a lap bar is lowered over their upper thighs. The ride then elevates the boat to about two stories high, then begins descending down a winding canal on a stream of water. The boat then hits a steeper descent and picks up speed until it reaches the bottom, at which point it causes water to splash up and soak the riders.

13. Aquaman is the second ride listed on the Guide. It is identified as a “Boat Ride.” The ride safety features and restrictions, as they appeared on the Old Guide, are as follows: (i) Front to back forces; (ii) Side to side forces; (iii) Restraints; (iv) Weight/size limits; and (v) Strong current. Additionally, there are three classes of people for whom the ride is “not recommended,” including those who (i) have heart problems; (ii) are pregnant; and (iii) have neck, back or bone problems. Finally, the Old Guide states that “[r]iders will get wet.”

14. On information and belief, Aquaman has never been listed among the “high thrill” rides on the Schedule.

**D. Mr. Bench’s Experience with Defendant**

15. Mr. Bench has repeatedly frequented amusement parks in his lifetime, including Six Flags Over Texas. Mr. Bench has ridden almost every ride at this park and has also ridden several rides at other theme parks operated by Defendant. Not once has he suffered an injury on a roller coaster or other ride due to not being able to hold on. And prior to May 21, 2012, Mr. Bench had never been turned away from any ride, including those operated by Defendant.

16. In March, 2012, Mr. Bench purchased three season passes from Defendant for himself and his family. Soon afterwards, they visited Six Flags Over Texas and rode every ride they wanted to, without being refused.

17. On May 21, 2012, they returned to the park and rode some rides. However, when they boarded Aquaman, a Six Flags employee asked Mr. Bench to dismount. She told him that he could not ride Aquaman because he does not have hands. This caused Mr. Bench considerable embarrassment, as his children had never seen anybody discriminate against him due to his lack of natural hands.

18. Mr. Bench later protested to a Mr. Padanno, a manager at Six Flags Over Texas. Mr. Padanno explained to Mr. Bench that company policy required that a rider must have at least one fully formed arm all the way down to the fingers. This statement of the park's policy was incorrect, at least with respect to Aquaman.

**E. Events Leading up to this Lawsuit**

19. Following the incident, Mr. Bench exchanged letters with Defendant explaining that in the past he had ridden all of the rides he was now banned from riding. He also informed Defendant that he had never had any accidents on a roller coaster and was perfectly capable of holding on to whatever safety feature the ride required. He stated his belief that the policy unfairly excludes him. None of this, however, led to Mr. Bench being granted an exception from the policy's inherent unfairness. Mr. Bench then hired the undersigned counsel, who made further inquiries on Mr. Bench's behalf. In response, Defendant mailed a copy of the Old Guide to Mr. Bench's counsel on September 14, 2012.

20. Sometime after September 14, 2012, Defendant published the New Guide, editing Aquaman's safety features and restrictions. The only difference between the Old Guide and the

New Guide with respect to Aquaman is the added notation, “Must have one full arm & one full leg. Riders must be able to sit properly, use the lap bar & stabilize themselves.”

21. Aquaman still is not listed on the Schedule as one of the “High Thrill” rides at Six Flags Over Texas.

22. In sum, at the time that Mr. Bench was asked to dismount Aquaman, Defendant’s policy did not require riders to have natural hands for that ride. Now it does. The ride itself has not changed. What has changed is that Mr. Bench complained, and in response Defendant changed the policy to reflect what they incorrectly told him was the policy at the time he was kicked off the ride.

23. These facts show the arbitrariness of the Defendant’s policies. Despite the suggestion on the Schedule that there are alleged manufacturer’s safety suggestions, it is clear that Defendant can and does change its policies whenever it wants to.

24. Furthermore, the policies are both over-inclusive and under-inclusive. This case shows how the rides are over-inclusive. Mr. Bench—who is capable of riding every ride at Six Flags Over Texas, and who has done so many times without injury to himself or others—is now unable to enjoy the rides with his family.

25. On the other hand, the policy is under-inclusive because it says nothing about those who have hands but choose not to hold on. There are many people who, either for extra thrill or in a silly display of bravado, keep their hands in the air for the duration of the ride. This is true even for the “high thrill” rides. Nevertheless, Six Flags does not prevent these people from going on further rides.

26. Mr. Bench wants to be able to visit Six Flags Over Texas and other parks operated by Defendant in the future. However, Defendant’s Policy prohibits him from enjoying the park.

Mr. Bench brings this action asking the Court (i) to declare that Defendant's policy violates the Americans with Disabilities Act ("ADA") and Chapter 121 of the Texas Human Resources Code ("THRC"); (ii) to enjoin Defendant from discriminating against Mr. Bench in the future; (iii) damages under the THRC; and (iv) attorneys' fees.

#### **IV. CAUSES OF ACTION**

##### **COUNT I**

##### **Violation of the Americans with Disabilities Act – Title III**

27. The preceding Paragraphs 1 through 20 are incorporated herein as if stated in full.

28. Mr. Bench is a person with a disability under 42 U.S.C. § 12102 (1)(A). Mr. Bench has no hands, and this itself satisfies the first definition of disability under that section because it is "a physical or mental impairment that substantially limits one or more major life activities."

29. Alternatively, Mr. Bench's was "regarded as having such an impairment" by Defendant. Defendant subjected Mr. Bench to its policy because of an actual or perceived physical impairment and Mr. Bench's impairment is not transitory or minor as he has lived with no hands his entire life.

30. Defendant operates a public accommodation. Six Flags Over Texas is an amusement park which is expressly included in the definition of "public accommodation" under the ADA.

31. Defendant has discriminated against Mr. Bench by imposing eligibility criteria for riding its rides. Specifically, Defendant implemented policies that require all riders to have natural hands, and this criteria is not necessary for the provision of services because Defendant can still continue to operate the rides even if Mr. Bench is riding on them.

32. Defendant further discriminated against Mr. Bench by failing to correctly enforce its own policy on the Aquaman ride.

33. Defendant further discriminated against Mr. Bench by failing to make reasonable modifications to its discriminatory policy to allow Mr. Bench to ride the rides, even where such a modification would not fundamentally alter the nature of the rides or Defendant's provision of the rides to non-disabled persons.

## **COUNT II**

### **Violation of the Texas Human Resources Code – Chapter 121**

34. The preceding Paragraphs 1 through 33 are incorporated herein as if stated in full.

35. Mr. Bench is a person with a disability as was born without hands.

36. Defendant operates Six Flags Over Texas, which is a public facility as a place of public accommodation, amusement, convenience, or resort to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited.

37. Defendant has violated the THRC by refusing to allow Mr. Bench to use its public facility because of Mr. Bench's disability.

38. Alternatively, Defendant has violated the THRC by failing to make reasonable accommodations in policies, practices, and procedures to allow Mr. Bench to enjoy the benefits of its public facility.

## **V. INJURY AND DAMAGES**

39. As a result of Defendant's discriminatory practices, Mr. Bench has suffered injuries in the form of compensatory damages and mental anguish. Plaintiff hereby seeks reimbursement of the cost of the season passes he purchased and money damages in an amount not less than the statutory minimum of \$100.00, the exact amount to be determined by the trier of fact. Tex. Human Res. Code § 121.004.

## VI. RESPONDEAT SUPERIOR

40. At the time of the incident made the basis of this lawsuit, Defendant employed agents who were working in the course and scope of their employment with Defendant, and were operating at Defendant's direction and/or in furtherance of its interests or business. Therefore, the acts of Defendant's agents may be imputed to Defendant, thereby holding Defendant vicariously liable for Mr. Bench's damages pursuant to the doctrine of respondeat superior.

## VII. JURY DEMAND

41. Defendant hereby demands a jury trial.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests a judgment from this Court declaring that Defendant's policies are in violation of Title III of the ADA and Chapter 121 of the THRC; an order from this Court enjoining Defendant from committing such discrimination in the future; money damages; attorneys' fees; and all other remedies at law or in equity to which Plaintiff shows himself justly entitled.

Respectfully submitted this 12<sup>th</sup> day of February, 2013.

/s/ Levi McCathern

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