

Joseph Cook
John Heenan
HEENAN & COOK, PLLC
1631 Zimmerman Trail
Billings, MT 59102
Phone: (406) 839-9091
Fax: (406)-839-9092
joe@lawmontana.com
john@lawmontana.com

Attorneys for Plaintiffs

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY**

SHANE BAKKEN, TRACEY BAKKEN,
SCOTT DANA, KATELIN HAGENBUCH,
JACOB HAGENBUCH, CHAD KER, THAD
LENSING, and JACKSON SMITH,

Plaintiffs,

vs.

THE BRIARWOOD, d/b/a THE BLACK
BUNKER BAR & GRILL, INDIVIDUAL
DOES 1-30, and OTHER DOES 1-10,

Defendants.

Cause No: DV-56-2023-0000850-NE

Judge: **Ashley Harada**

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

COME NOW the Plaintiffs, Shane Bakken, Tracey Bakken, Scott Dana, Katelin Hagenbuch, Jacob Hagenbuch, Chad Ker, Thad Lensing and Jackson Smith, (hereinafter collectively referred to as "Plaintiffs") by and through counsel, and for their complaint against the above named Defendants, state and allege as follows:

PARTIES

1. Plaintiffs Shane Bakken, Tracey Bakken, Scott Dana, Katelin Hagenbuch,

Jacob Hagenbuch, Thad Lensing and Jackson Smith were at all times relevant hereto a residents of the State of Montana, County of Yellowstone.

2. Plaintiff Chad Ker was at all times relevant hereto a citizen of the State of Oregon.

3. Defendant The Briarwood, d/b/a The Black Bunker Bar & Grill, a/k/a The Briarwood Country Club (hereafter collectively referred to as “The Briarwood”) was at all times relevant hereto a Domestic Corporation incorporated to do business in Yellowstone County, Montana, with its principal place of business and physical address at 3429 and 3425 Briarwood Boulevard, Billings, Montana, 59101.

4. The true names and capacities of INDIVIDUAL DOES 1-30 are unknown to the Plaintiffs, who therefore sue said Defendants under these fictitious names. On information and belief, Defendant INDIVIDUAL DOES 1-30, inclusive, are or were Board Members of The Briarwood, or in the alternative were persons who provided advice to The Briarwood at all times material hereto.

5. The true names and capacities of OTHER DOES 1-10 are unknown to the Plaintiffs, who therefore sue said Defendants under these fictitious names. On information and belief, Defendant OTHER DOES 1-10, inclusive, (i) directly participated in or assisted in the performance of the wrongful acts and omissions described herein, although the full extent of their involvement is unknown at this time, OR (ii) conspired with the named parties in this case to perform the wrongful acts and omissions described below, although the full extent of their involvement is unknown at this time, OR (iii) acted as principals or agents, actual or ostensible, of other named parties in this case in

performing the wrongful acts and omissions described below, although the full extent of their involvement is unknown at this time. Plaintiffs thus believe that Defendant DOES 1-30, inclusive, are liable for the damages and other relief sought in this case as participants, co-conspirators, principals or agents, or are otherwise necessary or indispensable parties to adjudication of the issues involved in this case. When the true names and capacities of DOES 1-30, inclusive, have been ascertained, appropriate amendments of this Complaint will be filed.

JURISDICTION AND VENUE

Plaintiffs re-allege and incorporate herein by reference the allegations of the preceding paragraphs as set forth in full, and further allege as follows:

6. This Court's jurisdiction over the matter is proper pursuant to § 3-5-302, Mont. Code Ann.

7. Venue is proper pursuant to § 25-2-122(1)(b), Mont. Code Ann., as all claims arising from this matter occurred within the confines of Yellowstone County, Montana.

FACTS COMMON TO ALL COUNTS

Plaintiffs re-allege and incorporate herein by reference the allegations of the preceding paragraphs as set forth in full, and further allege as follows:

8. On or about the evening of July 22, 2023, Plaintiffs were customers, patrons, and invitees of The Briarwood, many having recently attended, spectated, or participated in The Briarwood's annual "Tangle Derby" golf tournament at The Briarwood's golf course.

9. While Plaintiffs were occupying a deck connected to The Briarwood's

country club and restaurant area (commonly referred to as The Black Bunker Bar & Grill), which is located upon The Briarwood's grounds, the deck collapsed.

10. When the deck collapsed, it sent Plaintiffs, other patrons, tables, chairs, and other deck components and debris crashing to the ground below. The impact from the fall and impact with falling people and debris from the deck area caused serious, severe, and permanent injury to the Plaintiffs, many of whom required emergency and life sustaining care.

11. All Plaintiffs were injured through no fault of their own. None of the named Plaintiffs participated in or were afforded the opportunity to make decisions related to the maintenance, repair or any improvements related to the deck area in question.

12. None of the Plaintiffs were negligent or a cause of their own injuries/damages.

13. Plaintiffs incurred not only physical injury but have and will suffer pain of body and mind, have and will incur expenses for medical attention, may and may in the future suffer wage loss, income loss, and/or a diminished earnings capacity, and have lost their ability to enjoy an established course of life. In addition, certain Plaintiffs have suffered a loss of consortium.

14. The collapse occurred due to refusal to reasonably replace, failed maintenance, design flaws, and/or construction flaws.

15. The height of the deck at the time of the collapse was at least 10 feet.

16. Prior to its collapse, The Briarwood had made cosmetic improvements and/or cosmetic changes to parts of the deck. This included replacing the decking surface

with composite lumber and painting support structures.

17. Unbeknownst to Plaintiffs, and although the deck surface had recently undergone cosmetic improvements and appeared new and safe, at the time of the collapse the deck beams and support structure were comprised of and/or contained rotting and decaying lumber.

18. The deck contained no warning signage that indicated that it was comprised of rotting materials that could collapse at any moment.

19. Upon information and belief, the rotting and decaying components of the deck were known or should have been known to The Briarwood, including its management and board of directors, prior to the collapse of the deck.

20. Upon information and belief, while The Briarwood made cosmetic changes to the deck surface materials, no efforts were made to repair or replace or address the rotting structural components of the collapsed area of the deck itself.

21. Upon information and belief, prior to the collapse of the deck, The Briarwood or its agents painted the rotting undercarriage and support structure of the deck. The painting of the rotting structure was an intentional effort by The Briarwood to obscure, conceal, and hide the rotting condition of the deck from the Plaintiffs and from the other patrons and public upon The Briarwood's grounds.

22. Does 1-30 include Board Members of The Briarwood, past and present, or in the alternative were persons who provided advice to The Briarwood regarding the condition of the deck and the continued use of the deck in spite of its condition.

23. As a direct and proximate result of the dangerous conditions present on The

Briarwood's premises, as a direct and proximate result of The Briarwood's failure to repair or replace the rotting components of the subject deck, and as a direct and proximate result of The Briarwood's efforts to obscure, conceal, and otherwise hide the rotting components of the subject deck, the Plaintiffs suffered serious, severe, and permanent injuries through no fault of their own. Plaintiffs have suffered, and will continue to suffer, physical, financial, mental and emotional damages as a result of the Defendants' acts and omissions.

COUNT ONE – Negligence

Plaintiffs re-allege and incorporate herein by reference the allegations of the preceding paragraphs as set forth in full, and further allege as follows:

24. The Defendants negligently constructed, maintained, and/or repaired the subject deck.

25. The Defendants negligently failed to keep the subject deck in a safe condition by failing to prevent, cure, or remove dangerous conditions, which included removing or otherwise repairing the rotting and decaying support structure of the subject deck.

26. The Defendants negligently failed to warn Plaintiffs of the known defects in the subject deck.

27. The Defendants negligently and carelessly permitted, created, obscured, and concealed the dangerous conditions on the subject deck.

28. The acts and/or omissions of the Defendants increased the risk of harm to the Plaintiffs and created a false sense of safety at and upon the deck.

29. The acts and/or omissions of the Defendants in failing to properly maintain the deck, negligently designing and/or constructing the subject deck, failing to repair and/or replace the rotting structure of the subject deck, failure to warn of the known defects, and the concealment of the rotting structural components of the subject deck caused unreasonable hazards, led to the collapse of the subject deck, and directly caused injuries and damages to Plaintiffs.

30. Plaintiffs are entitled to all available damages provided by Montana law as a result of Defendants' negligence.

COUNT TWO – Premises Liability

Plaintiffs re-allege and incorporate herein by reference the allegations of the preceding paragraphs as set forth in full, and further allege as follows:

31. At all times relevant hereto, The Briarwood had exclusive control of the premises whereupon the Plaintiffs were injured.

32. The Briarwood owed non-delegable duties to all occupants and users of the subject deck to make reasonable and non-negligent repairs, to maintain the subject deck in a safe and reasonable manner, to cure defects, and to warn of hazardous conditions or hidden and lurking dangers.

33. The Briarwood breached its duties when it permitted or created the dangerous conditions on the subject premises. The breaches include, but are not limited to, negligent design/construction/maintenance/repair of the subject deck, concealment of the rotting structural components of the subject deck, and failure to warn Plaintiffs or protect Plaintiffs against hazardous conditions.

34. The Briarwood knew, or in the exercise of reasonable care, should have known, that unless reasonable care, control, and maintenance were taken of the subject premises, that dangerous conditions would exist such that the users of the subject deck could foreseeably be injured by the dangerous conditions.

35. The Briarwood negligently failed to take reasonable precautions to prevent injuries to persons lawfully on the subject premises, including Plaintiffs.

36. The Briarwood's acts and omissions in failing to properly maintain the subject deck and in concealing the rotting condition of the subject deck caused and created an unreasonable hazard which led to the collapse of the subject deck which in turn caused injuries and damages to Plaintiffs.

37. Plaintiffs are entitled to all available damages provided by Montana law as a result of The Briarwood's negligence.

COUNT THREE – Negligent Misrepresentation

Plaintiffs re-allege and incorporate herein by reference the allegations of the preceding paragraphs as set forth in full, and further allege as follows:

38. Defendants, including DOE Defendants, made material representations and alterations to the deck structure to induce the general public, club members and guests, including Plaintiffs, to attend and congregate on the deck at The Briarwood including representing the deck was new or updated through cosmetic coverups.

39. Defendants' presentation of the deck and visual representations were misleading and untrue.

40. Defendants' made the coverups with the knowledge the deck was

deteriorating and unsafe.

41. The representations and presentation of the deck were made with the intent to induce the Plaintiffs to rely on them.

42. Plaintiffs were unaware of the true condition of the deck beneath the cosmetic coverups performed by Defendants.

43. As a result of Defendants negligent misrepresentations, Plaintiffs were injured and damaged.

COUNT FOUR – Individual Board Member Liability

Plaintiffs re-allege and incorporate herein by reference the allegations of the preceding paragraphs as set forth in full, and further allege as follows:

44. Upon information and belief, Individual Does 1-30 were expressly made aware of the dangerous condition(s) of the subject deck at The Briarwood.

45. These Defendants nevertheless failed to make adequate repairs, failed to warn guests of the danger, and continued to allow and encouraged guests, such as Plaintiffs, to utilize the subject deck.

46. Due to their individual knowledge of the dangerous condition(s) of the subject deck and their role on the Board controlling The Briarwood, these Defendants have a personal responsibility for the injuries to the Plaintiffs.

47. Some or all of the Defendants are jointly liable under § 27-1-703(3), Mont. Code Ann., as they were principals of the responsible agents and/or they acted in concert with one another.

COUNT FIVE – Loss of Consortium

Plaintiffs re-allege and incorporate herein by reference the allegations of the preceding paragraphs as set forth in full, and further allege as follows:

48. Multiple named Plaintiffs have suffered and continue to suffer loss of consortium and are entitled to recover all damages available under Montana law as a result of the wrongful and negligent acts and/or omissions of the Defendants.

COUNT SIX – Negligent Infliction of Emotional Distress

Plaintiffs re-allege and incorporate herein by reference the allegations of the preceding paragraphs as set forth in full, and further allege as follows:

49. The wrongful and negligent acts and/or omissions of the Defendants constitute the commission of the tort of negligent infliction of emotional distress as that cause of action is recognized under Montana law. Many of the Plaintiffs have suffered and continue to suffer serious and severe psychological and emotional distress including, but not limited to, anger, grief, disappointment, fear, and worry, all of which have resulted in further damages and injuries to the Plaintiffs.

50. As a result of Defendants' negligent acts or omissions, Plaintiffs have suffered and continue to suffer serious and/or severe emotional distress which was a reasonably foreseeable consequence of the negligent acts and/or omissions and Defendants are liable to the Plaintiffs for all damages available under Montana law.

WHEREFORE, Plaintiffs respectfully request judgment against Defendants as follows:

1. For compensatory damages, both general and special, caused to Plaintiffs by Defendants in an amount to be proven at trial;

2. For costs, pre-judgment interest, and interest as allowed by law, in an amount to be determined by the Court; and
3. For all further legal or equitable relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury in this matter.

DATED this 4th day of August, 2023.

HEENAN & COOK, PLLC

By: /s/ Joseph Cook
Joseph Cook
Attorneys for Plaintiffs