

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

NANCY WIETEK, an individual,
and her husband, **DANIEL WIETEK**,
an individual,

Plaintiffs,

vs

**KERZNER INTERNATIONAL BAHAMAS
LIMITED, KERZNER INTERNATIONAL
LIMITED, KERZNER INTERNATIONAL
MARKETING, INC., KERZNER
INTERNATIONAL, MIDWEST, KERZNER
INTERNATIONAL RESORTS, INC.,
ISLAND HOTEL COMPANY LIMITED and
PARADISE ISLAND LIMITED**, jointly and severally,

Defendants.

Case Number:

Judge:

Magistrate Judge:

Law Offices of Mark Kelley Schwartz, P.C.

By: **MARK KELLEY SCHWARTZ**

(Federal Bar No. P48058)

Attorney for Plaintiff

29201 Telegraph Rd., Ste. 330

Southfield, MI 48034

Tel: (248) 353-4000

Fax: (248) 353-4005

Email: mks@mkslawfirm.com

COMPLAINT & JURY DEMAND

Plaintiffs, **NANCY WIETEK** and **DANIEL WIETEK**, by and through their undersigned legal counsel, **THE LAW OFFICES OF MARK KELLEY SCHWARTZ, P.C.**, in their Complaint against Defendants, **KERZNER INTERNATIONAL BAHAMAS LIMITED**, a Bahamian Company, **KERZNER INTERNATIONAL LIMITED**, a Bahamian

Company, **KERZNER INTERNATIONAL MARKETING, INC.**, a foreign corporation operating in Illinois, **KERZNER INTERNATIONAL, MIDWEST**, an unincorporated entity operating in Illinois, **KERZNER INTERNATIONAL RESORTS, INC.**, a foreign corporation, **ISLAND HOTEL COMPANY, LIMITED**, a Bahamian company, and **PARADISE ISLAND LIMITED**, a Bahamian company, (collectively the “**Kerzner Defendants**”), jointly and severally, state as follows:

JURISDICTION, VENUE AND GENERAL ALLEGATIONS

1. Plaintiffs, **NANCY WIETEK** and **DANIEL WIETEK**, husband and wife, were at all times relevant to these causes of action citizens of the United States of America and residents of the City of Warren, County of Macomb, State of Michigan.

2. Defendant, **KERZNER INTERNATIONAL BAHAMAS LIMITED**, a Bahamian Company, at all times relevant to these causes of action, owned, managed, controlled and operated, either directly or indirectly through subsidiaries, related and affiliated entities, the Atlantis Hotel & Casino, Paradise Island, Bahamas.

3. Defendant, **KERZNER INTERNATIONAL LIMITED**, a Bahamian Company, at all times relevant to these causes of action, owned, managed, controlled and operated, either directly or indirectly through subsidiaries, related and affiliated entities, the Atlantis Hotel & Casino, Paradise Island, Bahamas.

4. Defendant, **KERZNER INTERNATIONAL MARKETING, INC.**, a Florida corporation, registered to conduct business in the State of Illinois, with offices at 2275 Half Day Road, Bannockburn, Illinois, performs, supervises and controls, directly or indirectly through its subsidiaries, parent companies, related and affiliated entities, the marketing, solicitation and arrangement of travel for customers and guests of the Atlantis Hotel and Casino (the great

majority of whom come from the United States), including the Plaintiffs.

5. Defendant, **KERZNER INTERNATIONAL, MIDWEST**, an unincorporated entity conducting business in the State of Illinois with offices at 2275 Half Day Road, Bannockburn, Illinois, in conjunction with its parent(s), related and affiliated companies, engaged in the solicitation, marketing, advertising and arrangement of travel for various customers and guests of the Atlantis Hotel and Casino, including the Plaintiffs.

6. Defendant, **KERZNER INTERNATIONAL RESORTS, INC.**, a Florida corporation, upon information and belief, conducts business in the State of Illinois through its subsidiaries, parent companies, related and affiliated entities, through the marketing, advertising, solicitation and arrangement of travel for potential and actual guests and customers of the Atlantis Hotel and Casino, including the Plaintiffs.

7. Defendant, **ISLAND HOTEL COMPANY LIMITED**, a Bahamian company, is upon information and belief, a subsidiary of Defendant, Kerzner International Limited, and is involved in the operations, management, maintenance, supervision and business practices of the Atlantis Hotel & Casino.

8. Defendant, **PARADISE ISLAND LIMITED**, a Bahamian company, is upon information and belief, a subsidiary of Defendant, Kerzner International Limited, and is involved in the operations, management, maintenance, supervision and business practices of the Atlantis Hotel & Casino, Paradise Island, Bahamas.

9. These causes of action arise from the injuries sustained by Plaintiff, **NANCY WIETEK**, who on February 25, 2008, as a guest on the property of the Atlantis Hotel and Casino, Paradise Island, Bahamas, fell on the wet and excessively slippery tile of an outdoor walking path adjacent to the shopping center area of the Atlantis Resort, causing extensive

injuries to her knee which required multiple surgeries, and injuries to such other parts of her body, all as set forth throughout this Complaint.

10. Plaintiff, **DANIEL WIETEK**, is and was at all relevant times to the causes of action stated herein, the husband of Nancy Wietek and maintains an action for loss of consortium.

11. At all relevant times to these causes of action, the Defendants were subject to the personal jurisdiction of this Court as a result of the following:

- A. The Kerzner Defendants, either personally or through agents, employees, subsidiaries, or otherwise, engaged in, transacted, carried on a business or business ventures in Illinois, such that the Illinois Long-Arm Statute, 75 ILCS 5/2-209, provides jurisdiction.
- B. The Kerzner Defendants, personally or through agents, employees, subsidiaries, or otherwise, engaged in, transacted, carried on business transactions through their advertising, solicitation, marketing, arranging, representations, and such other actions taken in furtherance thereof, including, the arrangement and performance of a special charter flight which left from Chicago O'Hare International Airport (ORD) and flew direct to the Bahamas, and upon which the Wieteks and other customers of the Atlantis Hotel & Casino flew.
- C. The Kerzner Defendants themselves, or through agents, employees, subsidiaries, affiliated and related entities, own or lease property in Illinois located at 2275 Half Day Road, Bannockburn, Illinois 60015, providing for jurisdiction under 735 ILCS 5/2-209(3).

- D. The Kerzner Defendants themselves, or through their agents, employees, subsidiaries, did register at least one of their inter-related companies and holdings, Kerzner International Marketing, Inc., as a foreign corporation doing business in Illinois.
- E. The Kerzner Defendants actively solicited, marketed and advertised their hotel and casino in Illinois, through advertising, written and other in-person solicitation, assisted hotel and casino customers with hotel and casino related problems, and did engage in the substantial, and not isolated business, on an intrastate and interstate basis, in Illinois, such that jurisdiction exists over these Defendants through 735 ILCS 5/2-209(C).

12. As each of the Kerzner Defendants, along with their subsidiaries, related or affiliated entities, engage in the commercial operation of the property known as the Atlantis Hotel & Casino, Paradise Island, Bahamas, through advertising, marketing, sales generation, casino marketing, solicitation, arrangement of travel, including charter flights, “comp” travel arrangements for patrons of the casino, and their guests, and the operation, direction, supervision, control over the premises where Plaintiff, Nancy Wietek fell, they are engaged in a joint and/or common venture.

13. Federal jurisdiction arises from 28 U.S.C. 1332(a), as this action involves citizens of different states and subjects of a foreign state and further exceeds the minimum jurisdictional value of losses and harms, exclusive of interests and costs. Venue is laid in this judicial district under 28 U.S.C. 1391(a), in that each of the Defendants are found in this district and are subject to personal jurisdiction in this district.

**COUNT I – NEGLIGENCE
KERZNER DEFENDANTS**

14. Plaintiffs incorporate by reference the above-stated paragraphs as if fully stated herein.

15. Defendants owed Nancy Wietek a duty to use ordinary care to protect her, and other invitees similarly situated, from the risk of harm of an excessively slippery, defective or otherwise insufficiently maintained, walking path (an Atlantis-controlled means of egress and ingress from/to this area) as the risk of the resultant harm from the defect(s) was unreasonable, and the Defendants knew of or in the exercise of ordinary care, should have realized, that the condition represented an unreasonable risk of harm. These duties included:

- A. warning Plaintiff of dangers on the premises that the Defendants knew of or had reason to know of;
- B. inspecting for and warning the Plaintiff of dangerous conditions that the Defendant knew or should have known of,
- C. exercising ordinary care and prudence to keep the premises reasonably safe, including the selection of appropriate tiles or materials for an outdoor path, and;
- D. not advertising, soliciting, marketing, representing or taking such other actions to encourage persons like the Plaintiffs to stay at the Atlantis Hotel and Casino when such premises were hazardous by virtue of the excessively slippery, improperly selected, defectively maintained pathways which provided the controlled means of ingress and egress into an area.

16. Defendants breached their duties and were negligent in one or more of the following ways:

- A. failing to maintain the premises in a reasonably safe condition;
- B. failing to adequately inspect and make safe the premises for hazards, when reasonably anticipated events like rain showers which occur with some frequency in the environment, made the tile excessively slippery;
- C. failing to warn the Plaintiffs that the Atlantis Hotel and Casino contained walkways which were excessively slippery when exposed to precipitation, and they were neither maintained, designed nor were the materials selected properly or with due regard to the care of the Atlantis' guests, when considering all factors;
- D. failing to maintain the tile-covered walkway so that an excessively slippery condition does not occur;
- E. failing to warn guests and customers of the Atlantis Hotel and Casino that the tile was excessively slippery when wet;
- F. failing to make safe the premises by the neglecting or omitting to do any of the following, when considering the location and weather conditions which could arise:
 - 1. requiring that an appropriate tile be installed for the environment in which it is used;
 - 2. requiring that a surface-covering with an anti-slip or skid-resistant substance be placed on the outdoor tile;
 - 3. selecting another type of tile with better slip resistance, or using another material entirely for the pathway,
 - 4. demarcating the area in such a manner to make it open and obvious

to the casual user upon ordinary observation, that it was extremely hazardous after rain or precipitation; or,

5. barricading or blocking-off that portion of the premises affected by the condition which represented an unreasonable risk of harm.

17. One or more of Defendants' negligent acts or omissions was the legal and proximate cause of Plaintiff, Nancy Wietek's injuries.

18. As a result of Defendants' negligence, Plaintiff, Nancy Wietek suffered permanent physical injuries to her body, including a laceration to her knee, a torn lateral meniscus, internal derangement, scarring, exacerbation of pre-existing injuries, all requiring emergency medical treatment, multiple surgeries, physical rehabilitation and other such expenses and costs.

19. Plaintiff Nancy Wietek has further incurred pain, suffering, emotional distress, humiliation, mortification, embarrassment, permanent and serious disfigurement, scarring, medical, pharmaceutical and rehabilitative costs and expenses, loss of past and future wages, loss of past and future earnings, rehabilitative expenses, past and future physical therapy expenses, past and future pharmaceutical expenses, future surgical expenses and the loss of the pleasure and enjoyment of life, all in the past, present and into the future.

WHEREFORE, Plaintiff requests this Honorable Court award compensatory damages that will fully and fairly compensate her for the injuries, losses and damages incurred to date as well as compensatory and other damages for her future losses, plus costs, interest, reasonable attorney fees, and all other relief that is fair, just and equitable under the circumstances.

**COUNT II: GROSS NEGLIGENCE - PREMISES LIABILITY
ALL DEFENDANTS**

20. Plaintiffs incorporate by reference the above-stated paragraphs as if fully stated

herein.

21. Defendants owed Plaintiff a duty not to engage in any actions or omissions which were willful and wanton, and owed the duty to do the following:

- A. warning Plaintiff of dangers on the premises that the Defendants knew of or had reason to know of;
- B. inspecting for and warning the Plaintiff of dangerous conditions that the Defendant knew or should have known of,
- C. exercising ordinary care and prudence to keep the premises reasonably safe, including the selection of appropriate tiles or materials for an outdoor path, and;
- D. not advertising, soliciting, marketing, representing or taking such other actions to encourage persons like the Plaintiffs to stay at the Atlantis Hotel and Casino when such premises were hazardous by virtue of the excessively slippery, improperly selected, defectively maintained pathways which provided the controlled means of ingress and egress into an area.

17. Defendants breached their duties and were grossly negligent in one or more of the following ways:

- A. willfully and wantonly failing to maintain the premises in a reasonably safe condition;
- B. willfully and wantonly failing to adequately inspect and make safe the premises for hazards, when reasonably anticipated events like rain

showers, which occur with some frequency in the environment, made the tile excessively slippery;

- C. willfully and wantonly failing to warn the Plaintiffs that the Atlantis Hotel and Casino contained walkways which were excessively slippery when exposed to precipitation and they were neither maintained, designed nor were the materials selected properly with due regard to the care of the Atlantis' guests, when considering all factors;
- D. willfully and wantonly failing to maintain the tile-covered walkway so that an excessively slippery condition does not occur;
- E. willfully and wantonly failing to warn guests and customers of the Atlantis Hotel and Casino that the tile was excessively slippery when wet;
- F. willfully and wantonly failing to make safe the premises by the neglecting or omitting to do any of the following, when considering the location and weather conditions which could arise:
 - 1. requiring that an appropriate tile be installed for the environment in which it is used;
 - 2. requiring that a surface-covering with an anti-slip or skid-resistant substance be placed on the outdoor tile;
 - 3. selecting another type of tile with better slip resistance, or using another material entirely for the pathway,
 - 4. demarcating the area in such a manner to make it open and obvious to the casual user upon ordinary observation, that it was extremely hazardous after rain or precipitation; or,

5. barricading or blocking-off that portion of the premises affected by the condition which represented an unreasonable risk of harm.

22. One or more of Defendants' grossly negligent acts or omissions was the legal and proximate cause of Plaintiff Nancy Wietek's injuries.

23. As a result of Defendants' negligence, Plaintiff, Nancy Wietek suffered permanent physical injuries to her body, including a laceration to her knee, a torn lateral meniscus, internal derangement, scarring, assertion of pre-existing injuries, requiring emergency medical treatment, multiple surgeries, physical rehabilitation and other such expenses and costs as set forth below.

24. Plaintiff Nancy Wietek has further incurred pain, suffering, emotional distress, humiliation, mortification, embarrassment, permanent and serious disfigurement, scarring, medical, pharmaceutical and rehabilitative costs and expenses, loss of past and future wages, loss of past and future earnings, rehabilitative expenses, past and future physical therapy expenses, past and future pharmaceutical expenses, future surgical expenses and the loss of the pleasure and enjoyment of life, all in the past, present and into the future.

WHEREFORE, Plaintiff requests this Honorable Court award compensatory damages that will fully and fairly compensate her for the injuries, losses and damages incurred to date as well as compensatory and other damages for her future losses, plus costs, interest, reasonable attorney fees, and all other relief that is fair, just and equitable under the circumstances.

**COUNT IV: LOSS OF CONSORTIUM
ALL DEFENDANTS**

25. Plaintiffs incorporate by reference the above-stated paragraphs as if fully stated herein.

26. Plaintiff Nancy Wietek is now and was at all times relevant to this Complaint the lawful wife of Plaintiff Daniel Wietek.

27. Before suffering the injuries as indicated herein, Plaintiff Nancy Wietek was able to and did provide and perform for Plaintiff Daniel Wietek the duties of a spouse, including, without limitation, assisting in maintaining the home, and providing love, companionship, affection, society, relations, moral support, and solace.

28. As a direct and proximate result of the injuries, Plaintiff Nancy Wietek has been unable to perform these duties, depriving Plaintiff Daniel Wietek of his spouse's consortium, all to his damage, in a total amount to be established by proof at trial.

WHEREFORE, Plaintiff Daniel Wietek requests this Honorable Court award him his damages that will fully and fairly compensate him the injuries, losses and harms incurred to date as well as the future losses and harms, plus costs, interest, reasonable attorney fees, and all other relief that is fair, just and equitable under the circumstances.

COUNT V: PUNITIVE DAMAGES

29. Plaintiffs incorporate by reference the above-stated paragraphs as if fully stated herein.

30. Where Defendants' conduct rises to the level of wantonness, willfulness and the conscious disregard for the basic safety of its invitees, exemplary or punitive damages are permitted.

31. Defendants knew the area was subject to frequent rain showers, sprinkles or precipitation, as are common in Nassau, Bahamas.

32. Defendants knew that the surface of the covered walkway was excessively slippery when wet from precipitation or other substance, knew that substances which would

provide anti-skid or slip-resistance were available, knew that other materials, other than tile or this type of tile, would have provided better protection for its guests, understood that an excessively slippery, hard surface such as the pathway in question, could certainly cause serious injury to a guest, even while the guest was exercising appropriate care under the circumstances, yet consciously elected to utilize and continue to use this tile at this location.

33. Such conduct, in failing to take any affirmative measures to protect patrons, guests, invitees and other persons lawfully upon the premises, some of which were readily available and would have prevented this type of injury, demonstrates a willful, wanton and conscious disregard for Plaintiff Nancy Wietek's rights.

34. Plaintiff Nancy Wietek will never be made completely whole again by compensatory damages alone and punitive damages are warranted.

WHEREFORE, Plaintiffs requests this Honorable Court award them punitive damages that will fully and fairly compensate them for their injuries, losses and damages incurred to date as well as future losses and harms, plus costs, interest, reasonable attorney fees and all other relief that is fair, just and equitable under these circumstances.

Respectfully submitted,

MARK KELLEY SCHWARTZ, P.C.

/s/ Mark Kelley Schwartz

By: Mark Kelley Schwartz

(Federal Bar No. P48058)

Attorney for Plaintiff

29201 Telegraph Road, Suite 330

Southfield, MI 48034

Telephone: (248) 353-4000

Facsimile: (248) 353-4005

mks@mkslawfirm.com

DATED: February 23, 2010

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

NANCY WIETEK, individually,
and her husband, **DANIEL WIETEK**,
individually,

Plaintiffs,

vs

**KERZNER INTERNATIONAL BAHAMAS
LIMITED, KERZNER INTERNATIONAL
LIMITED, KERZNER INTERNATIONAL
MARKETING, INC., KERZNER
INTERNATIONAL, MIDWEST, KERZNER
INTERNATIONAL RESORTS, INC.,
ISLAND HOTEL COMPANY LIMITED and
PARADISE ISLAND LIMITED**, jointly and severally,

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By: **MARK KELLEY SCHWARTZ**

(Federal Bar No. P48058)

Attorney for Plaintiff

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Fax: (248) 353-4005

Email: mks@mkslawfirm.com

DEMAND FOR TRIAL BY JURY

Plaintiffs, **NANCY WIETEK and DANIEL WIETEK**, by and through their
undersigned legal counsel, **THE LAW OFFICES OF MARK KELLEY SCHWARTZ, P.C.**,

hereby demand trial by jury on all matters.

Respectfully submitted,

MARK KELLEY SCHWARTZ, P.C.

/s/ Mark Kelley Schwartz

Mark Kelley Schwartz

(Federal Bar No. P48058)

Attorney for Plaintiff

29201 Telegraph Rd., Ste. 330

Southfield, MI 48034

Telephone: (248) 353-4000

Facsimile: (248) 353-4005

mks@mkslawfirm.com

DATED: February 23, 2010