

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Northern Division)

TERRY L. MILLER, JR., \*  
1253 Glade Fork Road, \*  
Mannington, WV 26582 \*

Plaintiff, \*

v. \* Case No.:

DICK'S SPORTING GOODS, INC. \*

SERVE ON: \*  
CSC-LAWYERS INCORPORATING \*  
SERVICE COMPANY \*  
7 ST. PAUL STREET \*  
SUITE 820 \*  
BALTIMORE MD 2120 \*

and \*

GOOD SPORTSMAN \*  
MARKETING, LLC \*  
A/K/A GSM OUTDOORS \*  
D/B/A BIG GAME TREESTANDS \*

SERVE ON: \*  
ALEX CASTRO \*  
5250 FRYE ROAD \*  
IRVING, TX 75061 \*

Defendants.

\* \* \* \* \*

**COMPLAINT**

Plaintiff Terry L. Miller, Jr., by his undersigned counsel, hereby sues Dick's Sporting Goods, Inc. ("Dick's) and Good Sportsman Marketing, LLC a/k/a/ GSM Outdoors d/b/a Big Game Treestands ("Big Game") (collectively, "Defendants") for negligence, strict product liability,

breach of express and implied warranties, and violation of the Maryland Consumer Protection Act (the "MCPA"), Md. Code Ann., Com. Law §§ 13-101 *et seq.*

### **PARTIES**

1. Plaintiff Terry L. Miller, Jr. is a resident of the State of West Virginia. At the time that a substantial part of the events or omissions giving rise to his claims occurred, Mr. Miller was a resident of the State of Maryland.

2. Dick's is a Delaware Corporation with its principal place of business at 200 Industry Drive Philadelphia, Pennsylvania 15275. Upon information and belief, it is engaged in the sale of sporting goods, including treestands. Dick's regularly conducts business in the State of Maryland.

3. Big Game is a Delaware Corporation with its principal place of business at 5250 Frye Dr. Irving, Texas 75061. Upon information and belief, Big Game designs, manufactures, and sells sporting goods and hunting equipment, including treestands. Big Game regularly conducts business in the State of Maryland.

### **VENUE AND JURISDICTION**

4. This Court has jurisdiction under 28 U.S.C. § 1332 because Plaintiff is not a citizen of the same state as either Defendant and the amount in controversy exceeds \$75,000.

5. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

### **FACTS**

6. On or about September 28, 2021, Mr. Miller purchased a treestand known as "The Captain" Hang On Treestand, Model BGM-FP0050, Batch 2M-0121 (the "Treestand") from Dick's in White Marsh, Maryland. At that time, Mr. Miller was a resident of the State of Maryland.

7. Big Game designed, manufactured, and sold the Treestand.

8. A treestand is a platform secured to a tree many feet off the ground by hunters to gain a better vantage point while hunting. Depictions of the Treestand published by Dick's and Big Game, respectively, include:



9. On October 1, 2021, after he had just mounted the Treestand to a tree in West Virginia, Mr. Miller was standing on the platform (which was approximately eighteen feet off the ground) when the crimps and/or cables of the Treestand's platform suddenly failed and the platform collapsed, causing Mr. Miller to fall to the ground.

10. As a result, Mr. Miller has suffered severe pain and permanent injuries, including a severely fractured ankle. The injuries have caused him, and will continue to cause him, pain and mental anguish. Mr. Miller has also incurred, and will continue to incur, lost wages and medical expenses.

11. Dick's is a corporation regularly conducting business in the State of Maryland and it sold the Treestand to Mr. Miller.

12. Big Game is a corporation regularly conducting business in the State of Maryland and it designed, manufactured, and placed the Treestand into the stream of commerce.

13. The Captain Hang On Treestand, Model BGM-FP0050, Batch 2M-0121 has been recalled by Dick's and by Big Game (the "Recall").

14. The Recall information, as provided by the Consumer Product Safety Commission, states, "[t]he crimps of the plastic-coated cables can slip during use causing the standing platform to release, posing fall and injury hazards to users."

15. Prior to October 1, 2021, neither Dick's nor Big Game contacted Mr. Miller regarding the Recall of the Treestand or its defects.

16. Prior to October 1, 2021, Mr. Miller was unaware of the Recall or defects of the Treestand.

17. At all relevant times in question, Mr. Miller acted in a reasonable and prudent manner without any negligence contributing to the resulting incident.

**COUNT I - NEGLIGENCE**

*(Mr. Miller v. Dick's)*

18. Each of the numbered paragraphs of this Complaint are adopted and incorporated by reference as if fully stated in this paragraph.

19. At all relevant times in question, Dick's had a duty to ensure that the Treestand was free of defects and safe for its intended use.

20. Despite Dick's duty to ensure that the Treestand was safe for its intended use, there were defects in the Treestand which Dick's knew, or should have known, would cause injuries to the public, including Mr. Miller.

21. On October 1, 2021, while Mr. Miller was using the Treestand in a foreseeable manner, the crimps and/or cables of the Treestand's platform failed, causing Mr. Miller to fall to the ground.

22. Dick's breached its duty to Mr. Miller by selling the Treestand to Mr. Miller and/or placing it into the stream of commerce, with its defects, which then directly and proximately resulted in personal injuries sustained by Mr. Miller.

23. Dick's breached its duty of care and was negligent in the following particulars, among others:

- a. Failing to ensure the Treestand was safe for its intended use;
- b. Selling the Treestand with defects such that it was not safe for its intended use;
- c. Failing to ensure that the Treestand had been adequately engineered, manufactured, inspected, and tested;
- d. Failing to inspect the Treestand prior to selling it;
- e. Failing to ensure that appropriate crimps, cables, and/or other parts of the Treestand were properly utilized in the Treestands' design and/or manufacture;
- f. Failing to timely and appropriately recall the Treestand;
- g. Being otherwise careless, reckless, and negligent in regard to the design, manufacture, and/or sale of the Treestand.

24. All of the above-mentioned acts of negligence were carried out by Dick's.

25. The injuries to Mr. Miller were a natural, foreseeable, and probable consequence and direct result of the negligence of Dick's.

26. As a direct and proximate result of the negligence of Dick's, Mr. Miller sustained and continues to sustain substantial personal injuries (that have caused and will in the future cause him to incur medical bills and expenses), pain and suffering, mental anguish, loss of past, current, and future wages and earnings, and other economic and monetary damages and losses to be proven

at trial. Mr. Miller's personal injuries from the fall include a catastrophic fracture of his right ankle, which is a debilitating and permanent injury that will reasonably require future medical treatment and will continue to substantially impair his quality of life.

**WHEREFORE**, Mr. Miller demands judgment against Dick's in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) plus interest, costs of this action and for such other relief as is deemed just and proper.

**COUNT II - STRICT LIABILITY**  
*(Mr. Miller v. Dick's)*

27. Each of the numbered paragraphs of this Complaint are adopted and incorporated by reference as if fully stated in this paragraph.

28. The Treestand was placed into the stream of commerce and sold by Dick's in a defective and unreasonably dangerous condition in that the design and/or manufacture of the Treestand was such that the crimps and/or cables of the Treestand could fail during use, causing the standing platform of the Treestand to release.

29. The Treestand reached Mr. Miller without any substantial change in its condition and was in that same condition at the time of the injury herein alleged.

30. On October 1, 2021, while Mr. Miller was using the Treestand in a foreseeable manner, the crimps and/or cables of the Treestand's platform failed, causing Mr. Miller to fall to the ground.

31. Mr. Miller's fall and resulting injuries occurred because of the defective design and/or manufacture of the Treestand.

32. If the Treestand had not been defectively designed and/or manufactured, Mr. Miller would not have been injured.

33. As a direct and proximate result of the defect described above, Mr. Miller sustained and will continue to sustain the damages, pain and suffering, and losses described above.

34. Dick's is strictly liable for the injuries sustained by Mr. Miller.

**WHEREFORE**, Mr. Miller demands judgment against Dick's in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) plus interest, costs of this action and for such other relief as is deemed just and proper.

**COUNT III - NEGLIGENCE**  
*(Mr. Miller v. Big Game)*

35. Each of the numbered paragraphs of this Complaint are adopted and incorporated by reference as if fully stated in this paragraph:

36. At all relevant times in question, Big Game had a duty to ensure that the Treestand was free of defects and safe for its intended use.

37. Despite Big Game's duty to ensure that the Treestand was safe for its intended use, there were defects in the Treestand which Big Game knew, or should have known, would cause injuries to the public, including Mr. Miller.

38. On October 1, 2021, while Mr. Miller was using the Treestand in a foreseeable manner, the crimps and/or cables of the Treestand's platform failed, causing Mr. Miller to fall to the ground.

39. Big Game breached its duty to Mr. Miller by designing, manufacturing, and selling and/or placing into the stream of commerce the Treestand to Mr. Miller, with its defects, which then directly and proximately resulted in personal injuries sustained to Mr. Miller.

40. Big Game breached its duty of care and was negligent in the following particulars, among others:

- a. Failing to properly design the Treestand;

- b. Failing to select and use the appropriate crimps, cables, and/or other parts of the Treestand;
- c. Failing to manufacture and sell a Treestand that was safe for its intended use;
- d. Failing to warn and otherwise inform purchasers of the Treestand of defects in the design and manufacture of the Treestand;
- e. Failing to properly inspect and test the Treestand;
- f. Failing to timely and appropriately recall the Treestand;
- g. Being otherwise careless, reckless, and negligent in regard to the design, manufacture, and/or sale of the Treestand.

41. All of the above-mentioned acts of negligence were carried out by Big Game.

42. The injuries to Mr. Miller were a natural, foreseeable, and probable consequence and direct result of the negligence of Big Game.

43. As a direct and proximate result of the negligence of the Big Game, Mr. Miller sustained and will continue to sustain the damages, pain and suffering, and losses described above.

**WHEREFORE**, Mr. Miller demands judgment against Big Game in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) plus interest, costs of this action and for such other relief as is deemed just and proper.

**COUNT IV - STRICT LIABILITY**  
*(Mr. Miller v. Big Game)*

44. Each of the numbered paragraphs of this Complaint are adopted and incorporated by reference as if fully stated in this paragraph.

45. The Treestand was designed, manufactured, and placed into the stream of commerce and sold by Big Game in a defective and unreasonably dangerous condition in that the design and/or manufacture of the Treestand was such that the crimps and/or cables of the Treestand can fail during use, causing the standing platform of the Treestand to release.



46. The Treestand reached Mr. Miller without any substantial change in its condition and was in that same condition at the time of the injury herein alleged.

47. On October 1, 2021, while Mr. Miller was using the Treestand in a foreseeable manner, the crimps and/or cables of the Treestand's platform failed, causing Mr. Miller to fall to the ground.

48. Mr. Miller's fall and resulting injuries occurred because of the defective design and/or manufacture of the Treestand.

49. If the Treestand had not been defectively designed and/or manufactured, Mr. Miller would not have been injured.

50. As a direct and proximate result of the defect described above, Mr. Miller sustained and will continue to sustain the damages, pain and suffering, and losses described above.

51. Big Game is strictly liable for the injuries sustained by Mr. Miller.

**WHEREFORE**, Mr. Miller demands judgment against Big Game in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) plus interest, costs of this action and for such other relief as is deemed just and proper.

**COUNT V - BREACH OF EXPRESS WARRANTY**

*(Mr. Miller v. Dick's)*

52. Each of the numbered paragraphs of this Complaint are adopted and incorporated by reference as if fully stated in this paragraph.

53. Prior to September 28, 2021 through present, Dick's has advertised and expressly warranted that the "Weight Rating" of the Treestand is 300 lbs.

54. On October 1, 2021, Mr. Miller and his equipment weighed less than 300 lbs.

55. The Treestand was not capable of holding a weight of 300 lbs. and Dick's express warranty that it was able to do so was breached.

56. At all times herein, the express warranty that Treestand was capable of holding 300 lbs. was part of the basis for Mr. Miller's purchase of the Treestand.

57. As a direct and proximate result of Dick's breach of warranty, Mr. Miller sustained and will continue to sustain the damages, pain and suffering, and losses described above.

58. Mr. Miller notified Dick's of the breach of warranty within a reasonable time of discovering the breach and prior to filing this action.

**WHEREFORE**, Mr. Miller demands judgment against the Dick's in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) plus interest, costs of this action and for such other relief as is deemed just and proper.

**COUNT VI - BREACH OF EXPRESS WARRANTY**

*(Mr. Miller v. Big Game)*

59. Each of the numbered paragraphs of this Complaint are adopted and incorporated by reference as if fully stated in this paragraph.

60. Prior to September 28, 2021 through present, Big Game has advertised and expressly warranted that:

- a. Big Game sells "affordable, high-quality tree stands"
- b. "the Captain Hang-On Treestand is a fixed position treestand from Big Game that is perfect for the on-the-go hunter."
- c. "This treestand comes equipped with a 14in wide x 12in deep flex-tek seat which has the ability to flip up for full platform use." The platform is also called the "standing platform."
- d. "The Captain carries a weight rating of 300 lbs."

61. The Treestand's Owner's Manual expressly states that the Treestand has a maximum weight capacity of 300 lbs.

62. On October 1, 2021, Mr. Miller and his equipment weighed less than 300 lbs.

63. Big Game breached its express warranties because the Treestand was not high quality, was not capable of holding a weight of 300 lbs., was not capable of performing as a fixed position treestand, and was not capable of having a seat for full platform use.

64. At all times herein, the express warranties by Big Game set forth herein were part of the basis for Mr. Miller's basis for the purchase of the Treestand.

65. As a direct and proximate result of Big Game's breaches of warranty, Mr. Miller sustained and will continue to sustain the damages, pain and suffering, and losses described above.

66. Mr. Miller notified Big Game of the breaches of warranty within a reasonable time of discovering the breach and prior to filing this action.

**WHEREFORE**, Mr. Miller demands judgment against Big Game in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) plus interest, costs of this action and for such other relief as is deemed just and proper.

**COUNT VII - BREACH OF IMPLIED WARRANTY**

*(Mr. Miller v. Dick's and Big Game)*

67. Each of the numbered paragraphs of this Complaint are adopted and incorporated by reference as if fully stated in this paragraph.

68. At the time of the sale of the Treestand, Dick's and Big Game impliedly warranted to Mr. Miller that the Treestand was merchantable and fit for the ordinary purpose for which treestands are intended, namely, for safely allowing users to hunt from the Treestand while elevated many feet above the ground in a tree.

69. At the time of the sale of the Treestand, Dick's and Big Game impliedly warranted to Mr. Miller that the Treestand was fit for the particular purpose of enabling Mr. Miller to sit or stand on the platform of the Treestand while elevated many feet above the ground in a tree. Dick's and Big Game held themselves out to the public as possessing superior knowledge and skill in the

operation and use of treestands. Mr. Miller relied on this superior knowledge and skill of Dick's and Big Game in selecting the Treestand for his particular hunting requirements.

70. On October 1, 2021, Mr. Miller first attempted to use the Treestand. It became apparent that the Treestand was incapable of enabling Mr. Miller to hunt from the Treestand while above the ground in a tree, regardless of whether he sat or stood on the platform of the Treestand, when the crimps and/or cables of the Treestand's platform failed, causing Mr. Miller to fall to the ground. Mr. Miller was severely injured, and the Treestand could no longer be used by Mr. Miller.

71. Mr. Miller notified Dick's and Big Game of the breaches of warranty within a reasonable time after discovering the breaches and prior to filing this action.

72. As a result, Dick's and Big Game breached its implied warranties of merchantability and fitness for a particular purpose to Mr. Miller. As a direct and proximate result of such breaches, Mr. Miller sustained and will continue to sustain the damages, pain and suffering, and losses described above.

**WHEREFORE**, Mr. Miller demands judgment against Dick's and Big Game, jointly and severally, in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) plus interest, costs of this action and for such other relief as is deemed just and proper.

**COUNT VIII - VIOLATION OF THE MARYLAND CONSUMER PROTECTION ACT**

*(Mr. Miller v. Dick's)*

73. Each of the numbered paragraphs of this Complaint are adopted and incorporated by reference as if fully stated in this paragraph.

74. At all times relevant, Mr. Miller was a "Consumer" within the meaning of Md. Code Ann., Com. Law § 13-101(c)(1).

75. At all times relevant, Dick's was a "Merchant" within the meaning of Md. Code Ann., Com. Law § 13-101(g)(1).

76. At all times relevant, the Treestand was a "Consumer good" within the meaning of Md. Code Ann., Com. Law §§ 13-101(d).

77. Prior to September 28, 2021 through present, Dick's has advertised and represented that the Treestand has a "Weight Rating" of is 300 lbs. Thus, Dick's advertised and represented that the Treestand was a quality product that could withstand a weight of 300 lbs. when being used.

78. Dick's visually advertised that the Treestand could be installed and used with a platform secured by crimps and/or cables.



79. Dick's made those representations to consumers, including Mr. Miller.

80. When Dick's made those representations, it knew that the representations were false and misleading.

81. Dick's failed to state the material facts that the crimps and/or cables were defective, and that the Treestand could not be safely used as intended.

82. Dick's made the aforementioned misrepresentations of material facts with the intent that consumers, including Mr. Miller, would rely on those misrepresentations.

83. For multiple reasons, the acts and omissions by Dick's set forth above were unfair and deceptive trade practices in violation of §§ 13-301 and 13-303 of the Maryland Consumer Protection Act, including, for example:

- a. The aforementioned representations were false and misleading and had the capacity, tendency, and effect of deceiving or misleading consumers, including Mr. Miller. § 13-301(1).
- b. The above depiction of the Treestand having a seat and/or platform supported by crimps and cables was false and misleading and had the capacity, tendency, and effect of deceiving or misleading consumers, including Mr. Miller. § 13-301(1).
- c. The aforementioned representations are representations that the Treestand had a characteristic, benefit, standard, and quality that it did not have. § 13-301(2).
- d. The aforementioned failure to state material facts tends to deceive consumers, and did deceive Mr. Miller.
- e. The aforementioned representations constituted a deception, fraud, false pretense, false premise, and misrepresentation as defined in § 13-301(9).

84. In reliance on one or more of these unfair and deceptive trade practices, Mr. Miller purchased the Treestand. Had Dick's not engaged in unfair or deceptive trade practices, Mr. Miller would not have done so and, therefore, would not have sustained the above-described losses and damages.

85. As a direct and proximate result of Dick's unfair and deceptive trade practices, Mr. Miller sustained the damages described herein.

**WHEREFORE**, Mr. Miller demands judgment against Dick's in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) plus interest, costs of this action, reasonable attorneys' fees, and for such other relief as is deemed just and proper.

**COUNT IX - VIOLATION OF THE MARYLAND CONSUMER PROTECTION ACT**

*(Mr. Miller v. Big Game)*

86. Each of the numbered paragraphs of this Complaint are adopted and incorporated by reference as if fully stated in this paragraph.

87. At all times relevant, Mr. Miller was a "Consumer" within the meaning of Md. Code Ann., Com. Law § 13-101(c)(1).

88. At all times relevant, Big Game was a "Merchant" within the meaning of Md. Code Ann., Com. Law § 13-101(g)(1).

89. At all times relevant, the Treestand was a "Consumer good" within the meaning of Md. Code Ann., Com. Law §§ 13-101(d).

90. Prior to September 28, 2021 through present, Big Game has advertised and represented that:

- a. Big Game sells "affordable, high-quality tree stands"
- b. "the Captain Hang-On Treestand is a fixed position treestand from Big Game that is perfect for the on-the-go hunter."
- c. "This treestand comes equipped with a 14in wide x 12in deep flex-tek seat which has the ability to flip up for full platform use." The platform is also called the "standing platform."
- d. "The Captain carries a weight rating of 300 lbs."

91. Big Game visually advertised that the Treestand could be installed and used with a platform secured by crimps and/or cables.



92. Big Game made those representations to consumers, including Mr. Miller.

93. When Big Game made those representations, it knew that the representations were false and misleading.

94. Big Game failed to state the material facts that the crimps and/or cables were defective, and that the Treestand could not be safely used as intended.

95. Big Game made the aforementioned misrepresentations of material facts with the intent that consumers, including Mr. Miller, would rely on those misrepresentations.

96. For multiple reasons, the acts and omissions by Big Game set forth above were unfair and deceptive trade practices in violation of §§ 13-301 and 13-303 of the Maryland Consumer Protection Act, including, for example:

- a. The aforementioned representations were false and misleading and had the capacity, tendency, and effect of deceiving or misleading consumers, including Mr. Miller. § 13-301(1).



- b. The above depiction of the Treestand having a seat and/or platform supported by crimps and cables was false and misleading and had the capacity, tendency, and effect of deceiving or misleading consumers, including Mr. Miller. § 13-301(1).
- c. The aforementioned representations are representations that the Treestand had a characteristic, benefit, standard, and quality that it did not have. § 13-301(2).
- d. The aforementioned failure to state material facts tends to deceive consumers, and did deceive Mr. Miller.
- e. The aforementioned representations constituted a deception, fraud, false pretense, false premise, and misrepresentation as defined in § 13-301(9).

97. In reliance on one or more of these unfair and deceptive trade practices, Mr. Miller purchased the Treestand. Had Big Game not engaged in unfair or deceptive trade practices, Mr. Miller would not have done so and, therefore, would not have sustained the above-described losses and damages.

98. As a direct and proximate result of Big Game's unfair and deceptive trade practices, Mr. Miller sustained the damages described herein.

**WHEREFORE**, Mr. Miller demands judgment against Big Game in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) plus interest, costs of this action, reasonable attorneys' fees, and for such other relief as is deemed just and proper.

**JURY DEMAND**

Mr. Miller respectfully demands trial by jury for all issues so triable.

Dated: June 22, 2023

*/s/ David J. Shuster*

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