

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

NATHANIAL SIMMERMAN, individually,)
 and as Representative of the Wrongful Death)
 Class of Decedents, CASSANDRA)
 SIMMERMAN and QUINN SIMMERMAN)
)
 and)
)
 RACHAEL HULTZ, individually, and as)
 Representative of the Wrongful Death Class)
 of Decedent, HUDSON WAYNE HULTZ)
)
 Plaintiffs,)
 v.)
)
 JOHNNY PEERY,)
 Serve: 1200 S. Morris,)
 Mexico, MO 65265)
)
 Defendant.)

Case No.:
JURY TRIAL DEMANDED

PETITION

COME NOW Plaintiffs, Nathaniel Simmerman, individually, and as Representative of the Wrongful Death Class of Decedents, Cassandra Simmerman and Quinn Simmerman, and Rachael Hultz, individually, and as Representative of the Wrongful Death Class of Decedent, Hudson Wayne Hultz, by and through undersigned counsel, and for their Petition against Defendant, allege as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Nathaniel Simmerman (“Simmerman”) is the spouse of Decedent Cassandra Simmerman and natural father to Decedent Quinn Simmerman.
2. Plaintiff Simmerman is the surviving spouse and Representative of the Wrongful Death Class of Decedent Cassandra Simmerman, and is an individual and adult who is, and was at all relevant times, a citizen and resident of the State of Missouri.

3. Decedent Cassandra Simmerman is also survived by her two minor children.

4. Plaintiff Simmerman, as surviving spouse of Decedent Cassandra Simmerman, brings this wrongful death action pursuant to § 537.080, RSMo., *et seq.*, on behalf of the wrongful death class of Decedent Cassandra Simmerman.

5. Plaintiff Simmerman, as the natural father of Decedent Quinn Simmerman, brings this wrongful death action pursuant to § 537.080, RSMo., *et seq.*, on behalf of the wrongful death class of Decedent Quinn Simmerman.

6. Plaintiff Rachael Hultz (“Hultz”) is, and was at all relevant times, a citizen and resident of the State of Missouri.

7. Plaintiff Hultz is the natural mother of Decedent Hudson Wayne Hultz.

8. Plaintiff Hultz, as the natural mother of Decedent Hudson Wayne Hultz, brings this wrongful death action pursuant to § 537.080, RSMo., *et seq.*, on behalf of the wrongful death class of Decedent Hudson Wayne Hultz.

9. Defendant Johnny Peery (“Peery”) is a citizen and resident of Missouri, and may be served at the above-captioned address.

10. Defendant Peery is, and was at all relevant times, the owner of the truck at issue in this case that was operated by Monte Hayes.

11. This Court has general jurisdiction over Defendant Peery because he is a citizen of, and domiciled in, the State of Missouri.

12. Defendant Peery employed Monte Hayes during the incident and owned the truck involved in the collision with Plaintiffs.

13. Venue is proper in Boone County, Missouri, in that the cause of action arose in Boone County, Missouri.

AGENCY

14. At all times relevant herein, Defendant was acting by and through his ostensible employee and agent, Monte Hayes.

15. At all times relevant herein, Monte Hayes was acting within the course and scope of his employment and/or agency with Defendant.

16. At all times relevant herein, Monte Hayes was acting for the benefit of Defendant in the furtherance of Defendant's interests.

GENERAL ALLEGATIONS

17. On August 10, 2021, Monte Hayes was hauling wooden pallets on a 1993 GMC C6000 TopKick LowPro (VIN 1GDE6H1P0PJ514350) flatbed truck (the "Truck") traveling eastbound on Missouri 22, a two-lane highway in Boone County, Missouri.

18. At the same time, Plaintiff Hultz operated a 2019 Nissan Maxima, with Cassandra Simmerman seated in the front passenger seat, traveling westbound on Missouri 22 in Boone County, Missouri.

19. The crash occurred when Monte Hayes lost control of the Truck.

20. Monte Hayes traveled off the left side of the eastbound lane and into the westbound lane, striking the front passenger side of Plaintiff Hultz's 2019 Nissan Maxima ("Subject Incident").

21. At the time of the Subject Incident, both Cassandra Simmerman and Plaintiff Hultz were pregnant.

22. The Subject Incident resulted in the death of Cassandra Simmerman and her unborn child, Decedent Quinn Simmerman.

23. The Subject Incident also resulted in the eventual death of Plaintiff Hultz's child

she was carrying at the time of the Subject Incident, Decedent, Hudson Wayne Hultz.

24. Plaintiff Hultz survived the Subject Incident with severe and permanent personal injuries that include: liver laceration, renal laceration, head, skull fractures, subarachnoid hemorrhage, traumatic brain injuries with ongoing symptoms, rib fractures, bilateral hemopneumothorax, back, neck, spine, pelvis, and hips.

25. Plaintiff Hultz and Decedent Cassandra Simmerman were wearing seatbelts at the time of the Subject Incident.

26. Monte Hayes was not licensed to operate the Truck for hire at the time of the Subject Incident because his driver's license was cancelled.

27. In addition, the Truck Monte Hayes was driving at the time of the Subject Incident did not have the appropriate operating authority.

28. The Truck was illegally registered.

29. At all times relevant, including the Subject Incident:

- a. Defendant Peery owned the Truck operated by Monte Hayes; and
- b. Defendant Perry leased, rented, operated and/or utilized the Truck.

30. Defendant Peery caused or contributed to cause the fatal injuries sustained by Decedents and damages sustained by Plaintiffs.

COUNT I – NEGLIGENCE
(ALL PLAINTIFFS v. DEFENDANT VIA *RESPONDEAT SUPERIOR* OF HAYES)

31. Plaintiffs incorporate by reference all paragraphs of this Petition as if set forth herein.

32. Monte Hayes had a duty to exercise ordinary and reasonable care while operating the Truck on roads in Missouri.

33. Monte Hayes had a duty to operate the Truck in a careful and prudent manner with

regard for the rights of other motorists on Missouri roads.

34. Monte Hayes breached the aforesaid duties and was negligent in one or more of the following respects:

- a. Failed to keep a proper lookout;
- b. Failed to sound his horn or provide any warning of a potential collision prior to entering an occupied lane of travel;
- c. Failing to stop, swerve, or timely apply brakes when there was sufficient time to do so in order to prevent from running the Truck out of its lane of travel;
- d. Failed to be licensed to operate an intrastate commercial vehicle for hire;
- e. Failure to maintain a valid Missouri driver's license;
- f. Driving a motor vehicle when it was not fit for operation on Missouri roadways;
- g. Failing to properly maintain the Truck;
- h. Failing to adequately inspect the Truck and its tires and wheels;
- i. Failed to control the Truck;
- j. Operated the Truck when it was not in proper operating conditions at all times;
and
- k. Failed to perform a proper and thorough safety check of the Truck.

35. As a direct and proximate result of the negligence of Monte Hayes, Cassandra Simmerman, Quinn Simmerman, and Hudson Wayne Hultz died.

36. As a direct and proximate result of the careless and negligent acts/omissions of Defendant and Hayes, Plaintiff Nathaniel Simmerman and the wrongful death beneficiaries of Decedent Cassandra Simmerman sustained the following damages due to Cassandra Simmerman's death:

- a. Pecuniary losses suffered by reason of Cassandra Simmerman's death;
- b. Pre-death pain, suffering, and emotional distress of Decedent between the time of injury and the time of death, for which Decedent would have maintained an action had she survived; and
- c. Loss of services, consortium, companionship, comfort, instruction, guidance, counsel, training and support sustained in the past and that in reasonable probability will be sustained in the future.

37. As a direct and proximate result of the careless and negligent acts/omissions of Defendant and Hayes, Plaintiff Nathaniel Simmerman, as natural father of Quinn Simmerman, and the wrongful death beneficiaries of Decedent Quinn Simmerman, sustained the following damages:

- a. Pecuniary losses suffered by reason of Quinn Simmerman's death;
- b. Pre-death pain, suffering, and emotional distress of Decedent between the time of injury and the time of death, for which Decedent would have maintained an action had he survived; and
- c. Loss of services, consortium, companionship, comfort, instruction, guidance, counsel, training and support sustained in the past and that in reasonable probability will be sustained in the future.

38. As a direct and proximate result of the careless and negligent acts/omissions of Defendant and Hayes, Plaintiff Hultz sustained the following damages:

- a. Future medical and rehabilitation expenses;
- b. Past medical and rehabilitation expenses;
- c. Past, present and future pain, suffering and psychological anguish;

- d. Past and future income;
- e. Impaired earning capacity;
- f. Loss of enjoyment of life; and
- g. Emotional distress.

39. As a direct and proximate result of the careless and negligent acts/omissions of Defendant and Hayes, Plaintiff Hultz and the wrongful death beneficiaries of Decedent Hudson Wayne Hultz seek the following damages set forth in RSMo § 578.090, for the wrongful death of Decedent Hudson Wayne Hultz:

- a. Pecuniary losses suffered by reason of the death of Hudson Wayne Hultz;
- b. Pre-death pain, suffering, and emotional distress of Decedent between the time of injury and the time of death, for which Decedent would have maintained an action had he survived; and
- c. Loss of services, consortium, companionship, comfort, instruction, guidance, counsel, training and support sustained in the past and that in reasonable probability will be sustained in the future.

40. Defendant Peery is vicariously liable for the negligent acts and omissions of Monte Hayes because Defendant Peery was acting by and through Mr. Hayes as his agent, servant, or employee at the time that Mr. Hayes engaged in such negligent acts and omissions.

WHEREFORE, Plaintiffs pray that this Court enter judgment against Defendant Peery for a reasonable sum of damages as will fairly and justly compensate Plaintiffs in excess of twenty-five thousand dollars (\$25,000), for their costs incurred herein, and for such other and further relief as the Court may deem just and proper under the circumstances.

COUNT II – NEGLIGENCE PER SE
(ALL PLAINTIFFS v. DEFENDANT PEERY)

41. Plaintiffs incorporate by reference all paragraphs of this Petition as if set forth herein.

42. The Subject Incident and the injuries and damages described herein are the direct and proximate result of Defendant Peery’s violations of statutory and regulatory authority, as well as Monte Hayes’ statutory and regulatory violations when Mr. Hayes was acting as Defendant Peery’s agent, in at least the following respects:

- a. R.S.Mo. § 304.014, requiring all persons operating or driving a vehicle on the highways of Missouri to observe and comply with the rules of the road;
- b. 49 C.F.R. § 391.11, which prohibits a person from driving a commercial motor vehicle unless the driver is qualified to drive a commercial motor vehicle;
- c. 49 C.F.R. §383.111, which requires that all commercial motor vehicle operators have knowledge of the following areas: procedures for safe vehicle operations; the effects of fatigue; proper procedures needed to use a commercial motor vehicle’s safety systems in emergency situations; emergency maneuvers such as evasive steering, emergency stopping, and equipment failure;
- d. 49 C.F.R. § 396.7(a), which states that a motor vehicle shall not be operated in such a condition as to likely cause an accident or a breakdown of the vehicle;
- e. 49 C.F.R. § 392.3, which requires that every commercial motor vehicle be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated;
- f. Monte Hayes and Defendant Peery failed to ensure the Truck met the minimum standards for commercial motor vehicles as defined under 49 C.F.R. § 393.1 in

- that the tire and wheel were not properly installed;
- g. Defendant Peery and Mr. Hayes were negligent in that they violated § 396.7, which requires inspection to ensure parts and accessories to be in safe and proper operating condition at all times;
- h. Defendant Peery and Mr. Hayes were negligent and violated § 396.13, in that Defendant and Hayes did not adequately perform a driver inspection and that Hayes drove the vehicle when it was not in a safe operating condition;
- i. Monte Hayes failed to operate the Truck in a careful and prudent manner in violation of R.S.Mo. § 304.012;
- j. Monte Hayes failed to exercise the highest degree of care while operating the Truck in violation of R.S.Mo. § 304.012;
- k. Monte Hayes failed to operate the Truck in a careful and prudent manner and failed to exercise the highest degree of care, in violation of 49 C.F.R. § 392.7, in that he drove the Tractor-Trailer at a time when its parts, accessories and equipment were not in good working order;
- l. 49 C.F.R. § 391.11, which prohibits a person from driving a commercial motor vehicle unless the driver is qualified to drive a commercial motor vehicle; and
- m. 49 C.F.R. § 390.3, which requires motor carriers to be knowledgeable of and comply with all regulations applicable to it and requires it to instruct every driver and employee with regard to all applicable regulations.

43. These statutes, ordinances, and regulations were enacted to protect Missouri motorists and passengers from the dangerous operation of vehicles.

44. At the time of the violations above, Decedent Cassandra Simmerman, Decedent

Quinn Simmerman, Plaintiff Hultz and Decedent Hudson Wayne Hultz, were passengers in a motor vehicle on a Missouri roadway and thus belonged to the class of persons that these statutes, ordinances, and regulations were intended to protect.

45. These violations of statutes, ordinances, and regulations were the direct and proximate cause of the Subject Incident.

46. Defendant Peery is vicariously liable for the violations of Monte Hayes, in that Defendant Peery was acting by and through Monte Hayes, as his agent, servant, and employee at the time that Monte Hayes engaged in such negligent acts and/or omissions and violations of statutes and regulations.

47. As a direct and proximate result of the negligence per se of Defendant Peery, acting through Monte Hayes, Decedent Cassandra Simmerman, Decedent Quinn Simmerman, and Decedent Hudson Wayne Hultz died.

48. As a direct and proximate result of the negligence per se of Defendant Peery, acting through Monte Hayes, Plaintiff Hultz suffered severe and progressive personal injuries that include liver laceration, renal laceration, head, skull fractures, subarachnoid hemorrhage, traumatic brain injuries with ongoing symptoms, rib fractures, bilateral hemopneumothorax, back, neck, spine, pelvis, and hips.

49. As a direct and proximate result of the careless and negligent acts/omissions of Defendant Perry and Monte Hayes, Plaintiff Nathaniel Simmerman and the wrongful death beneficiaries of Decedent Cassandra Simmerman sustained the following damages due to Cassandra Simmerman's death:

- a. Pecuniary losses suffered by reason of Cassandra Simmerman's death;
- b. Pre-death pain, suffering, and emotional distress of Decedent between the time

of injury and the time of death, for which Decedent would have maintained an action had she survived; and

- c. Loss of services, consortium, companionship, comfort, instruction, guidance, counsel, training and support sustained in the past and that in reasonable probability will be sustained in the future.

50. As a direct and proximate result of the careless and negligent acts/omissions of Defendant Perry and Monte Hayes, Plaintiff Nathaniel Simmerman, as natural father of Decedent Quinn Simmerman, and the wrongful death beneficiaries of Decedent Quinn Simmerman, sustained the following damages:

- a. Pecuniary losses suffered by reason of Quinn Simmerman's death;
- b. Pre-death pain, suffering, and emotional distress of Decedent between the time of injury and the time of death, for which Decedent would have maintained an action had he survived; and
- c. Loss of services, consortium, companionship, comfort, instruction, guidance, counsel, training and support sustained in the past and that in reasonable probability will be sustained in the future.

51. As a direct and proximate result of the careless and negligent acts/omissions of Defendant Perry and Monte Hayes, Plaintiff Hultz sustained the following damages:

- a. Future medical and rehabilitation expenses;
- b. Past medical and rehabilitation expenses;
- c. Past, present and future pain, suffering and psychological anguish;
- d. Past and future income;
- e. Impaired earning capacity;

- f. Loss of enjoyment of life; and
- g. Emotional distress.

52. As a direct and proximate result of the careless and negligent acts/omissions of Defendant Peery and Monte Hayes, Plaintiff Hultz and the wrongful death beneficiaries of Decedent Hudson Wayne Hultz seek the following damages set forth in RSMo § 578.090, for the wrongful death of Decedent Hudson Wayne Hultz:

- a. Pecuniary losses suffered by reason of the death of Hudson Wayne Hultz;
- b. Pre-death pain, suffering, and emotional distress of Decedent between the time of injury and the time of death, for which Decedent would have maintained an action had he survived; and
- c. Loss of services, consortium, companionship, comfort, instruction, guidance, counsel, training and support sustained in the past and that in reasonable probability will be sustained in the future.

WHEREFORE, Plaintiffs pray that this Court enter judgment against Defendant Peery for a reasonable sum of damages as will fairly and justly compensate Plaintiffs in excess of twenty-five thousand dollars (\$25,000), for their costs incurred herein, and for such other and further relief as the Court may deem just and proper under the circumstances.

**COUNT III – DIRECT NEGLIGENCE OF DEFENDANT PEERY
(ALL PLAINTIFFS v. DEFENDANT PEERY)**

53. Plaintiffs incorporate by reference all paragraphs of this Petition as if set forth herein.

54. Defendant Peery owed the general public a duty of care to supervise employee, Monte Hayes, to adequately train Monte Hayes, and investigate and monitor Monte Hayes' ability, fitness, and qualifications.

55. Defendant Peery owed a duty of care to adequately maintain and inspect the Truck.

56. Defendant Peery breached that duty of care and was negligent in at least the following respects:

- a. Defendant Peery failed to determine that Monte Hayes lacked the requisite ability, fitness, and qualifications at the time of his first employment with Defendant Peery;
- b. Defendant Peery knew, or should have known, that Monte Hayes lacked the requisite ability, fitness and qualifications to operate the Truck;
- c. Defendant Peery knew or should have known that Monte Hayes had dangerous proclivities;
- d. Defendant failed to provide adequate and sufficient training to Monte Hayes such that he could obtain the requisite ability, fitness and qualifications to operate the Truck;
- e. Defendant Peery failed to have adequate policies and procedures in place to prevent the Subject Incident;
- f. Defendant Peery failed to ensure that Monte Hayes possessed sufficient knowledge so as to be in a position to safely operate the vehicle;
- g. Defendant Peery failed to monitor the activities of Monte Hayes and failed to supervise Monte Hayes to ensure he could safely operate the Truck;
- h. Defendant Peery knew or should have known that Monte Hayes lacked the ability, fitness, and qualifications to act on behalf of Defendant Peery as an employee and/or agent;

- i. Defendant Peery entrusted and allowed Monte Hayes to operate the Truck at a time when he knew, or should have known, that Monte Hayes lacked the requisite ability, fitness and qualifications to safely operate the Truck at the time of the Subject Incident;
- j. In hiring Monte Hayes and entrusting him with the Truck;
- k. In permitting or requiring Monte Hayes to operate a Truck when he was too fatigued or impaired to operate a vehicle safely;
- l. Defendant Peery entrusted and allowed Monte Hayes to operate the Truck at a time when he knew, or should have known, that he was not in compliance with one or more of the Federal Motor Carrier Safety Regulations so as to safely operate the Truck;
- m. Defendant Peery failed to adequately maintain the Truck and its tires; and
- n. Defendant Peery failed to inspect the Vehicle.

57. As a direct and proximate result of the negligence of Defendant Peery, Decedent Cassandra Simmerman, Decedent Quinn Simmerman, and Decedent Hudson Wayne Hultz died.

58. As a direct and proximate result of the negligence of Defendant Peery, Plaintiff Hultz suffered severe and progressive personal injuries that include liver laceration, renal laceration, head, skull fractures, subarachnoid hemorrhage, traumatic brain injuries with ongoing symptoms, rib fractures, bilateral hemopneumothorax, back, neck, spine, pelvis, and hips.

59. As a direct and proximate result of the careless and negligent acts/omissions of Defendant Peery, Plaintiff Nathaniel Simmerman and the wrongful death beneficiaries of Decedent Cassandra Simmerman sustained the following damages due to Decedent Cassandra Simmerman's death:

- a. Pecuniary losses suffered by reason of Cassandra Simmerman's death;
- b. Pre-death pain, suffering, and emotional distress of Decedent between the time of injury and the time of death, for which Decedent would have maintained an action had she survived; and
- c. Loss of services, consortium, companionship, comfort, instruction, guidance, counsel, training and support sustained in the past and that in reasonable probability will be sustained in the future.

60. As a direct and proximate result of the careless and negligent acts/omissions of Defendant Peery, Plaintiff Nathaniel Simmerman, as natural father of Decedent Quinn Simmerman, and the wrongful death beneficiaries of Decedent Quinn Simmerman, sustained the following damages:

- a. Pecuniary losses suffered by reason of Quinn Simmerman's death;
- b. Pre-death pain, suffering, and emotional distress of Decedent between the time of injury and the time of death, for which Decedent would have maintained an action had he survived; and
- c. Loss of services, consortium, companionship, comfort, instruction, guidance, counsel, training and support sustained in the past and that in reasonable probability will be sustained in the future.

61. As a direct and proximate result of the careless and negligent acts/omissions of Defendant Peery, Plaintiff Hultz sustained the following damages:

- a. Future medical and rehabilitation expenses;
- b. Past medical and rehabilitation expenses;
- c. Past, present and future pain, suffering and psychological anguish;

- d. Past and future income;
- e. Impaired earning capacity;
- f. Loss of enjoyment of life; and
- g. Emotional distress.

62. As a direct and proximate result of the careless and negligent acts/omissions of Defendant Peery, Plaintiff Rachel Hultz and the wrongful death beneficiaries of Decedent Hudson Wayne Hultz seek the following damages set forth in RSMo § 578.090, for the wrongful death of Decedent Hudson Wayne Hultz:

- a. Pecuniary losses suffered by reason of the death of Hudson Wayne Hultz;
- b. Pre-death pain, suffering, and emotional distress of Decedent between the time of injury and the time of death, for which Decedent would have maintained an action had he survived; and
- c. Loss of services, consortium, companionship, comfort, instruction, guidance, counsel, training and support sustained in the past and that in reasonable probability will be sustained in the future.

WHEREFORE, Plaintiffs pray that this Court enter judgment against Defendant Peery for a reasonable sum of damages as will fairly and justly compensate Plaintiffs, for costs incurred herein, and for such other and further relief as the Court may deem just and proper under the circumstances.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all allegations, claims and causes of action asserted herein.

Respectfully submitted,

LANGDON & EMISON LLC

/s/ Mark A. Emison

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