

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPT.
Civil Action No.: 2384CV01359

COMMERCE INSURANCE COMPANY,
Interpleader Plaintiff

v.

JOSE C. LOPEZ, YUSHAN LIU, MIRANDA
SHEINBAUM, NOAH PORTNER, LUNA LI,
JOSHUA ALDWINCKLE-POVEY, JOSEPH
SPPINELLO, MAX KAPPLER, LONG YI,
AISSLIN WELCH, CASSIDY HANCK, ZORAIDA
IBARRA, HANNAH PEARLMAN, SOLVAI
LEWENBERG, JESSICA LEE, ERIKA KIM,
MATTHEW FOSHAY, JONAS SIKORSKIS,
THANOSHI BALASURIYA, AARON ROSENDORF,
BASAMATTIE DOOKIE, ELEFThERIA
TOPALOGLOU, ERIN HUNT, JIAYUE JESSICA
YUAN, LIAM SPILKER, MITCHELL BRADY,
NATHALIE VIEUX-GRESHAM, TALI
TUKACHINSKY, YASLA NGOMA, ANNABEL
WINTERBERG, **DAVID MARK as Special
Administrator of the Estate of VANESSA MARK,**
JEAN FENELON, BRANDEIS UNIVERSITY, and
JOSEPH'S TRANSPORTATION, INC.
Interpleader Defendants

v.

JOSEPH'S TRANSPORTATION, INC.,
and JEAN MICHEL FENELON
Third Party Defendants

ANSWER AND CROSSCLAIMS
OF THE INTERPLEADER DEFENDANT,
DAVID MARK as Special Administrator of the Estate of VANESSA MARK

The Interpleader Defendant, David Mark as Special Administrator of the Estate of Vanessa

Mark answers the Interpleader Complaint as follows.

1. Admitted
2. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.
3. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.
4. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.
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12. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.
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14. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.
15. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.
16. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.
17. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.
18. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.
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21. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.
22. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.
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25. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

26. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

27. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

28. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

29. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

30. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

31. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

32. Admitted.

33. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

34. Admitted.

35. Admitted.

36. Admitted.

37. Admitted.

FACTS COMMON TO ALL COUNTS

38. Admitted.

39. Admitted.

40. Admitted.

41. Admitted.

42. Admitted.

43. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

44. Admitted.

45. Admitted.

46. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

47. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

THE COMPETING CLAIMS

Claims of the Estate of Vanessa Mark

48. Admitted.

Claims of Jose C. Lopez

49. Admitted.

50. Admitted.

51. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

52. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

Claims of Basmattie Dookie

53. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

Other Competing Claimant's with Attorneys

54. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

Other Competing Claimant's without Attorneys

55. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

56. Admitted.

57. Admitted.

58. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

59. Admitted.

60. Admitted.

61. Admitted.

62. Admitted.

63. Denied.

64. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

Count 1 – Interpleader vs. Competing Claimants

65. No responsive pleading is required.

66. Admitted.

Count 2 – Interpleader vs. Joseph’s Transportation and Jean Fenlon

67. No responsive pleading is required.

68. Admitted.

69. Admitted.

70. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

71. Admitted.

72. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

73. Admitted.

Count 3 – Interpleader vs. Brandeis

74. No responsive pleading is required.

75. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

76. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

77. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

78. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

79. Admitted.

80. The Interpleader Defendant is not in possession of sufficient information to either admit or deny the allegation in this paragraph.

81. Admitted.

CROSSCLAIM VS. JEAN FENELON and JOSEPH'S TRANSPORTATION

1. Plaintiff, David Mark is an individual residing in the State of California at 428 Van Barhn Street, Los Altos. He brings this action in his capacity as Special Administrator of the Estate of his daughter, Vanessa Mark (hereinafter 'decedent').

2. Defendant, Joseph's Transportation, Inc. (hereinafter 'Joseph's Transportation'), is a corporation organized in accordance with the laws of Commonwealth of Massachusetts with a principal place of business at 44 James Street, Medford, County of Middlesex.

3. Joseph's Transportation is in the transportation business, acting as a common carrier transporting students and other persons pursuant to contracts with public and private schools in this Commonwealth, including but not limited to Brandeis University.

4. Defendant, Jean Michel Fenelon (hereinafter 'Fenelon'), is an individual residing in this Commonwealth at 115 Blake St., Hyde Park, County of Suffolk. At all times pertinent hereto, Fenelon was an employee and driver for Joseph's Transportation.

FACTUAL ALLEGATIONS

5. On or about November 19, 2022, Fenelon was transporting passengers from Boston to Waltham pursuant to a contract between Brandeis University and Joseph's Transportation via a shuttle bus (hereinafter "the shuttle bus") owned by Joseph's Transportation.

6. There were approximately thirty passengers on board the shuttle bus, including the decedent, a 25-year-old Brandeis undergraduate student.

7. At approximately 10:30 PM, Fenelon was traveling at 54 miles per hour on South Street in Waltham, which is a posted 30 mile per hour zone, when he lost control of the shuttle bus causing it to jump the sidewalk, become airborne striking two trees and smashing its front end into another tree.

8. As a direct and proximate result of the crash, the decedent was killed and numerous other passengers were severely injured.

9. At the time of the crash the weather was clear, and the road was dry.

10. At the time of the crash, Fenelon had logged over 73 hours of driving work over eight consecutive days in violation of the 70-hour safety rule.

11. At the time of the crash, Fenelon had logged over 10 hours following 8 consecutive hours off duty in violation of the 10-hour safety rule.

12. At the time of the crash, Joseph's Transportation had not obtained a signed duty statement from Fenelon for the preceding 7 days providing the total time on duty during the preceding 7 days as is required.

13. At all times relevant hereto, Fenelon held a second job with Transdev Transportation working approximately 40 or more hours a week, shuttling students in Boston.

14. On information and belief, Joseph's Transportation drivers, including but not limited to Fenelon, were negligently and or with gross negligence trained, tested, monitored, and supervised in the safe transportation of passengers and the safety rules associated therewith.

15. At all times relevant hereto, Joseph's Transportation and Fenelon negligently and or with gross negligence owned, leased, selected, equipped, designed, manufactured, operated, informed, maintained, serviced, repaired, inspected, trained, monitored controlled, entrusted, loaded and/or drove the shuttle bus and the shuttle bus operations in such a manner on November 19, 2022, so as to cause the shuttle bus to careen off the roadway on South Street in Waltham and violently crash into a tree so as to cause and/or contribute to the death of the decedent.

16. At all times relevant hereto, Joseph's Transportation maintained a systemic culture wherein it allowed its driver, Fenelon to violate driving laws and safety rules associated with the amount of hours a driver may safely operate a vehicle transporting passengers.

COUNT I
Wrongful Death v. Jean Michel Fenelon

17. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 16 as if fully set forth herein.

18. Fenelon negligently, carelessly and with gross negligence operated the shuttle bus on November 19, 2022, driving in violation of safety rules and laws resulting in the crash that killed the decedent, Vanessa Mark.

19. Fenelon, as a shuttle bus driver and common carrier, owed a duty to the decedent, a passenger, who had placed her safety into his hands, the highest degree of care with respect to operating the shuttle bus and avoiding hazards that might cause harm to his passengers, including but not limited to the decedent.

20. Fenelon breached his duty to the decedent when he negligently, carelessly and with gross negligence:

- a. Operated the shuttle bus on November 19, 2022, in violation of state speeding laws by traveling 54 miles per hour in a marked 30 mile per hour zone;
- b. Causing the shuttle bus on November 19, 2022 to exit the roadway, become airborne, strike two trees and smash the front end of the shuttle bus into another tree;
- b. Operated the shuttle bus on November 19, 2022, in violation of the 70-hour safety rule;
- c. Operated the shuttle bus on November 19, 2022, in violation of the 10-hour safety rule;
- d. Operated the shuttle bus on November 19, 2022, without providing a signed statement to Joseph's Transportation indicating the total time "on duty driving" during the preceding 7 days.

21. Fenelon knew or reasonably should have known that his acts and or omissions, as described herein, created a foreseeable and unreasonable risk of physical harm to his passengers, including but not limited to the decedent.

22. The aforesaid acts and omission of Fenelon were negligent, grossly negligent and or careless and in disregard of the safety of the decedent.

23. As a direct and proximate result of the aforementioned negligence, gross negligence and/or carelessness of Fenelon, the decedent, Vanessa Mark was killed.

24. The next of kin of the decedent are entitled to fair monetary compensation, including but not limited to, compensation for services, protections, care, assistance society, companionship, comfort, guidance, counsel, and advice of the decedent and to the reasonable funeral and burial expenses of decedent.

WHEREFORE, David Mark as Special Administrator of the Estate of Vanessa Mark, demands judgment against defendant, Jean Michel Fenelon, and the fair monetary value of decedent to the next of kin of decedent, including but not limited to compensation for the loss of the reasonably expected net income, services, protection, care, assistance society, companionship, comfort, guidance, counsel and advice of decedent, and the damages recovered, the reasonable funeral and burial expenses of decedent, punitive damages in an amount of not less than five thousand dollars because Decedent's death was caused by the gross negligence of Fenelon, together with interest, costs and reasonable attorney's fees, pursuant to M.G.L. c. 229 s. 2 as well as such other relief as this court deems necessary and proper.

COUNT II

Vicarious Liability/ Agency or Respondeat Superior v. Joseph's Transporation, Inc.

25. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 24 as if fully set forth herein.

26. At all times relevant hereto, Fenelon was an agent (real or ostensible) or servant of Joseph's Transportation and was a person for whose conduct Joseph's Transportation was and is legally responsible.

27. As a direct and proximate result of the aforementioned improper conduct of Fenelon, for whose conduct Joseph's Transportation was and is responsible, decedent Vanessa Mark was killed on November 19, 2022.

28. The next of kin of the decedent are entitled to fair monetary compensation, including but not limited to, compensation for services, protections, care, assistance society, companionship, comfort, guidance, counsel, and advice of the decedent and to the reasonable funeral and burial expenses of decedent.

WHEREFORE, David Mark as Special Administrator of the Estate of Vanessa Mark, demands judgment against defendant, Joseph's Transportation, Inc., and the fair monetary value of decedent to the next of kin of decedent, including but not limited to compensation for the loss of the reasonably expected net income, services, protection, care, assistance society, companionship, comfort, guidance, counsel and advice of decedent, and the damages recovered, the reasonable funeral and burial expenses of decedent, punitive damages in an amount of not less than five thousand dollars because decedent's death was caused by the gross negligence of Joseph's Transportation, together with interest, costs and reasonable attorney's fees, pursuant to M.G.L. c. 229 s. 2 as well as such other relief as this court deems necessary and proper.

COUNT III
Wrongful Death v. Joseph's Transportation, Inc.

29. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 28 as if fully set forth herein.

30. Joseph's Transportation negligently, carelessly and with gross negligence operated a business acting as a common carrier transporting students and other persons including providing shuttle bus service on November 19, 2022, for passengers including the decedent Vanessa Mark.

31. Joseph's Transportation, as a common carrier, owed a duty of the highest degree of care to the decedent, a passenger, who had placed her safety into its hands.

32. Joseph's Transportation breached his duty to the decedent when it negligently, carelessly and with gross negligence:

- a. provided improperly trained, tested, monitored, and supervised shuttle bus drivers, such as Fenelon, in the safe transportation of passengers and the safety rules;
- b. owned, leased, selected, equipped, designed, manufactured, operated, informed, maintained, serviced, repaired, inspected, trained, monitored, controlled, entrusted, loaded and/or drove the shuttle bus operations in such a manner on November 19, 2022, so as to cause the shuttle bus to careen off the roadway and violently crash into a tree so as to cause the death of the decedent;
- b. maintained a systemic culture wherein it allowed its driver, Fenelon to violate driving laws and safety rules associated with the amount of hours a driver may safely operate a vehicle transporting passengers;
- c. did not obtain a signed duty statement from Fenelon for the preceding 7 days providing the total time on duty during the preceding 7 days;
- d. failed to ensure its drivers, such as Fenelon, were not operating vehicles in excess of the 70-hour safety rule or the 10 hour safety rule;
- e. failed to conduct a thorough investigation and evaluation of the competency, background, training, safety/ accident history, citation history, compliance with 70

hour and 10-hour safety rules, and suitability of its drivers, including but not limited to Fenelon.

33. Joseph's Transportation knew or reasonably should have known that its acts and or omissions, as described herein, created a foreseeable and unreasonable risk of physical harm to its passengers, including but not limited to the decedent.

34. The aforesaid acts and omission of Joseph's Transportation were negligent, grossly negligent and or careless and in disregard of the safety of the decedent.

35. As a direct and proximate result of the aforementioned negligence, gross negligence and/or carelessness of Joseph's Transportation, the decedent, Vanessa Mark was killed.

24. The next of kin of the decedent are entitled to fair monetary compensation, including but not limited to, compensation for services, protections, care, assistance society, companionship, comfort, guidance, counsel, and advice of the decedent and to the reasonable funeral and burial expenses of decedent.

WHEREFORE, David Mark as Special Administrator of the Estate of Vanessa Mark, demands judgment against defendant, Joseph's Transportation, and the fair monetary value of decedent to the next of kin of decedent, including but not limited to compensation for the loss of the reasonably expected net income, services, protection, care, assistance society, companionship, comfort, guidance, counsel and advice of decedent, and the damages recovered, the reasonable funeral and burial expenses of decedent, punitive damages in an amount of not less than five thousand dollars because Decedent's death was caused by the gross negligence of Joseph's Transportation, together with interest, costs and reasonable attorney's fees, pursuant to M.G.L. c. 229 s. 2 as well as such other relief as this court deems necessary and proper.

JURY TRIAL DEMAND

The Plaintiff hereby demands trial by jury of all questions of fact and all other appropriate issues and matters.

The Plaintiff,
David Mark, as Special Administrator
Of the Estate of Vanessa Mark,
By his attorneys,

Andrew D. Nebenzahl

Andrew D. Nebenzahl, BBO# 368065
anebenzahl@neblawgroup.com
Aimée M. Goulding, BBO# 654341
agoulding@neblawgroup.com
The Nebenzahl Law Group, PC
One Post Office Square
Sharon, MA 02067
(781) 784-2000

Clay Robbins, III, *Pro Hac Vice Pending*
WISNER BAUM LLP
1111 Santa Monica Boulevard
Suite 1750
Los Angeles, CA 90025
(310) 207-3233

Date: August 17, 2023