



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

CORNELIA ONEY, Individually and)
as Administrator of the Estate of Steven S. Oney,)
deceased and for the benefit of herself and)
ELLEN THOMPSON, FRANCIS TULL,)
and WILMA ONEY)

Plaintiffs,)

v.)

PAUL J. FISHER, JR., DONALD L. MARINE and)
DONALD M. MARINE FARMS,)

Defendants.)

C.A. No.)

COMPLAINT
JURY TRIAL DEMANDED

1. Decedent. Steven S. Oney, resided at 34404 Whaley’s Road, Laurel, Delaware 19956, until his death on June 14, 2017. (“Oney”) Oney was unmarried and had no children.

2. Plaintiff, Cornelia Oney, is the sister of Steven S. Oney who resides at [REDACTED]
[REDACTED] Cornelia Oney was appointed Administratrix of the Estate of Steven S. Oney by Cynthia Green, Register for the Probate of Wills and Granting of Letters of Administration in and for Sussex County, on August 29, 2017.

3. Plaintiff, Francis Tull, is the sister of Steven S. Oney, who resides at [REDACTED]
[REDACTED]

4. Plaintiff, Ellen O. Thompson, is the sister of Steven S. Oney who resides at [REDACTED]
[REDACTED]

5. Plaintiff, Wilma Oney, is the sister of Steven S. Oney who resides
at [REDACTED]

6. The Plaintiffs identified in paragraphs 1 through 5 are hereafter referred to collectively as “Plaintiffs.”

7. Defendant, Paul J. Fisher, Jr. (“Fisher”) was driving on a suspended license and was not a licensed commercial driver at the time of the fatal collision. He resides at [REDACTED] [REDACTED] Fisher was driving a vehicle owned by Defendant Donald L. Marine and was in the course and scope of his employment, agency, and was the servant of Donald L. Marine and Donald M. Marine Farms.

8. Defendant, Donald L. Marine is the owner of the truck, a 2001 Freightliner 6-wheel dump body style truck, 2 door, yellow in color, displaying fictitious Delaware registration FT4384 and Vehicle Identification Number (VIN) 1FVABTBS21HH70208, driven illegally by Paul J. Fisher, Jr. at the time of the collision for his employer’s business purposes.

9. Defendant, Donald M. Marine Farms is engaged in the raising of race horses, farming and construction business and was the employer of Paul J. Fisher, Jr., who is the agent, servant and employee of Donald L. Marine and Donald M. Marine Farms and was acting within the scope of his employment such that Donald L. Marine and Donald M. Marine Farms (collectively referred to as “Marine”) are vicariously liable for the acts and omissions of Fisher. Defendants, Marine conduct business at 30354 E. Trap Pond Road, Laurel, Delaware 19956.

10. On June 14, 2017, a clear day without clouds or wind, at about 7:27 a.m. Steven Oney was operating his bicycle northbound on Whaley’s Road (CR62) approximately 180’ south of Wooten Road (CR72), 5.3 miles east of Delmar.

11. In the area of the crash, Whaley’s Road is completely straight. Both the east and west sides of the roadway are bordered by dense woods and a water filled creek. The travel lanes

are separated by a double yellow line. There are no shoulders present and the lane edges are not marked.

12. This is a very rural area and there are no residences within 500 feet of the crash scene. At the time of the crash, the roadway was dry and the sky was clear. The speed limit is 50 mph.

13. Oney was driving his bicycle near the east asphalt edge of the roadway on the pavement.

14. Defendant Fisher, who was operating the Marine dump truck, failed to observe the bicyclist (Oney) in the roadway and without warning ran over the bicycle and Oney, dragging him 76.9 feet from the initial point of impact. The right front bumper of defendants' vehicle struck the rear of Oney's bicycle, causing the rear frame/tire to gouge the asphalt for area of impact and severely and fatally injuring Oney.

15. A debris field led to the body of the victim, Oney, who was entangled under a green Grand Teton FS Elite mountain bicycle. Oney was wearing a white t-shirt, blue jeans, white socks and black sneakers. He had sustained loss of one leg and other massive traumatic injuries that were inconsistent with life.

16. Oney was pronounced dead at the scene at approximately 7:48 a.m. nearly twenty minutes after the collision/impact.

17. There is no evidence that Defendant Fisher tried to stop his vehicle before striking Oney. The evidence shows that the tires of the Defendants' dump truck had been driven off of the roadway and on the grassy edge of the roadway where Oney had apparently headed to try to avoid the oncoming vehicle.

18. Defendants, and each of them knew that there were no operable brakes on the dump truck. Despite this knowledge, Defendants Marine directed Defendant Fisher to operate the dangerous vehicle upon the highway and to cross state lines to obtain and load it with sawdust or other heavy material.

19. Defendants, and each of them knew that driving a loaded vehicle with inoperable or seriously impaired brakes was dangerous to the driving, bicycling and pedestrian public including Steven Oney and wantonly and willfully ignored the risk opting to operate it in that dangerous condition.

20. When Defendant Fisher saw Oney and his bicycle ahead he failed to apply the brakes because he knew that the brakes could not stop the collision.

21. The dump truck owned and operated by the Defendants should never have been on the road due to its inoperable brakes, unlicensed driver and several other “out of service” violations that contributed to the death of Oney. These include but are not limited to:

- a. Severely inoperative/defective brakes; and
- b. The driver was operating a property-carrying vehicle without possessing a valid medical certificate; and
- c. The driver was operating a CMV without a CDL; and
- d. Operation of a CMV with fictitious registration; and
- e. Operation of a CMV with no fuel tax sticker; and
- f. Improper use of farm tag; and
- g. Other violations as noted in the Delaware State Police Report.

22. Defendant Fisher was charged with several criminal offenses as a result of killing Oney with defendants’ dump truck.

23. On October 2, 2017, Defendant Fisher pled guilty in this court, case identification number 1708016605 to the crime of operating a motor vehicle causing death. As part of his plea Defendant Fisher admitted that his inattentiveness caused the death of Steven Oney.

24. Defendant Fisher admitted through his attorney that he was at fault for the death of Steven Oney.

25. Defendant Fisher's admission of guilt includes the following: "It does appear that from the point of impact my client is at fault. He didn't give enough room for the young man on the bicycle."

26. Defendants Marine knew or should have known that previously, in 2006, while also employed by them, Defendant Fisher was charged with violations for inattentive driving.

COUNT I

NEGLIGENCE CLAIM AGAINST PAUL J. FISHER, JR.

27. Plaintiffs incorporate by referenced herein all of the facts and allegations contained in paragraphs 1 through 26 of the Complaint as if fully set forth herein.

28. The aforesaid collision and Oney's resulting injuries and death were directly and proximately caused by the negligence, gross negligence, and/or recklessness of Defendant Paul J. Fisher, Jr., in that he:

a. Drove in an inattentive manner causing the death of Steven S. Oney in violation of 21 Del.C. § 4176A;

b. Failed to maintain a proper lookout while operating the dump truck he was driving in violation of 21 Del. C. § 4176(b);

c. Failed to give full time and attention to the operation of the truck he was driving in violation of 21 Del. C. § 4176(b);

d. Operated the truck he was driving in a careless and imprudent manner, without due regard for traffic conditions then existing, in violation of 21 Del. C. § 4176(a);

e. Operated the truck he was driving at a speed greater than was reasonable and prudent under the conditions and without having due regard for the actual and potential hazards then existing, in violation of 21 Del. C. § 4168(a) and (b)

f. Operated the truck he was driving in a wanton disregard for the safety of other persons or property, in violation of 21 Del. C. § 4175(a);

g. Operated the commercial vehicle across state lines and in the area of the collision without a proper driver's license, in violation of 21 Del. C. §2607;

h. Operating an unregistered vehicle upon the highway, in violation of 21 Del. C. §2115;

i. Operated an unsafe vehicle knowing that it did not have operable brakes;

j. Violated the common law duty of lookout; and

k. Was otherwise negligent, grossly negligent and willfully and wantonly negligent.

29. As a direct and proximate result of the aforesaid negligence, the plaintiffs have suffered extensive losses in the past and will continue to incur in the future additional financial expenses and losses which they are entitled to recover.

WHEREFORE, Plaintiffs demand judgment against Defendant Paul J. Fisher, Jr. and Defendants Marine for their general, punitive and special damages, pre- and post-judgment interest, the costs of this action, and any other damages the jury deems just and proper.

COUNT II

NEGLIGENCE CLAIM AGAINST DONALD L. MARINE

AND DONALD M. MARINE FARMS

30. The paragraphs and allegations stated above are incorporated herein by reference and made a part hereof as if set forth in full.

31. At all times pertinent hereto, Defendant Fisher was an employee, agent and/or servant of the Marine defendants.

32. At all times pertinent hereto, Defendant Fisher was acting in the course and scope of his employment with the Marine defendants and was authorized to operate the vehicle owned by Defendant Donald L. Marine.

33. Therefore Defendants Marine are responsible for the negligent actions and/or inactions of Defendant Fisher under the doctrines of respondeat superior and/or vicarious liability.

34. The aforesaid collision was proximately caused by the negligence and/or gross negligence of Defendants Marine in that they:

- a. hired Defendant Fisher when they knew or should have known that Defendant Fisher was unfit or incompetent to operate a commercial motor vehicle;
- b. retained Defendant Fisher when they knew or should have known that Defendant Fisher was unfit or incompetent to operate a commercial motor vehicle;
- c. failed to adequately train Defendant Fisher to operate a commercial motor vehicle;
- d. failed to adequately supervise, monitor and control Defendant Fisher; and
- e. failed to have or follow proper policies and procedures for the employment, training, retention, supervision, monitor, and control of its drivers and/or assignment of drivers;

- f. failed to properly maintain the truck driven by Defendant Fisher;
- g. failure to keep operable and working brakes on the vehicle;
- h. was otherwise negligent.

35. As a direct and proximate result of the aforesaid negligence, plaintiffs have incurred in the past and will continue to incur in the future additional financial expenses, losses and damages which they are entitled to recover.

WHEREFORE, Plaintiffs demand judgement against Defendants Marine jointly, severally and individually, for their special and general damages, including pain and suffering, the costs of this action plus pre-judgment and post-judgment interest and other such relief as the court and jury find just and proper.

COUNT III

SURVIVAL ACTION AGAINST ALL DEFENDANTS

36. The paragraphs and allegations stated above are incorporated herein by reference and made a part hereof as if set forth in full.

37. As a proximate result of all defendants' negligence, Steven Oney sustained an appreciable interval of grievous conscious pain and suffering and was caused to suffer a horrible death.

38. Plaintiff Cornelia Oney, as Administrator of the Estate of Steven S. Oney, hereby brings this claim pursuant to 10 Del. C. §§3701 and 3704 for damages sufficient to compensate Steven Oney for his pain and suffering and pecuniary losses and punitive damages.

WHEREFORE, Plaintiffs demand judgment against each and every defendant individually, jointly and severally for special, general and pecuniary damages as set forth above,

including pain and suffering in such amounts as justice and the nature of the case require, together with interest and costs, including pre- and post-judgement interest.

COUNT IV

WRONGFUL DEATH CLAIM AGAINST ALL DEFENDANTS

39. The paragraphs and allegations stated above are incorporated herein by reference and made a part hereof as if set forth in full.

40. Plaintiffs, as biological and legal sisters of Steven Oney, bring this claim for the wrongful death of their brother pursuant to 10 Del. C. §3724 and for the mental anguish and pecuniary damages, including lost wages, they have endured and will continue in the future to endure as a consequence of Defendants' negligence, and each of them.

41. Plaintiffs have suffered the loss of their brother, by means of his wrongful death, and injuries including but not limited to:

- a. Deprivation of the expectation of pecuniary benefits to them that would have resulted had Oney's life continued;
- b. Loss of contribution for support;
- c. The cost of reasonable funeral expenses;
- d. The mental and emotional anguish, physical pain, and pecuniary damages resulting from Oney's death all as provided in 10 Del. C. § 3724e, which they have incurred and will continue to incur in the future; and
- e. Other losses and expenses.

WHEREFORE Plaintiffs demand judgment against Defendants individually, jointly and severally for general, punitive, and special damages, including pain and suffering, mental

anguish, negligent infliction of emotional distress, the cost of this accident, pre- and post-judgment interest, and any other award the Court deems just and proper.

V.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

November 28, 2017

/s/ Andrew A. Whitehead
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