

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR MANATEE COUNTY
CIRCUIT CIVIL DIVISION

Plaintiff, TIMOTHY YOUNG, as
Personal Representative of the Estate
of ALLEN YOUNG, deceased,

Plaintiff,

CASE NO.: 2011-CA-000374

vs.

ROGER C. NYBERG, RONALD E. BAKER,
ROUNTREE TRANSPORT & RIGGING, INC.
a Florida corporation, THE L.E. MYERS COMPANY,
a foreign profit corporation, FLORIDA POWER &
LIGHT COMPANY, a Florida corporation, CHARLES
A. LEFEVRE a/k/a TONY LEFEVRE, PALM BEACH
TRUCKING, LLC, d/b/a MERCHANT TRANSPORT,
INC., a Florida corporation, and GENERAL MOTORS,
LLC, a foreign limited liability company,

Defendants.

_____ /

THIRD AMENDED COMPLAINT

Plaintiff, TIMOTHY YOUNG, as Personal Representative of the Estate of Allen Young, deceased, by and through his undersigned attorneys, sues the Defendants, ROGER C. NYBERG, RONALD E. BAKER, ROUNTREE TRANSPORT & RIGGING, INC., THE L.E. MYERS COMPANY, FLORIDA POWER & LIGHT COMPANY, CHARLES A. LEFEVRE a/k/a TONY LEFEVRE, PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC. and GENERAL MOTORS, LLC, and alleges as follows:

GENERAL ALLEGATIONS

1. This is an action for wrongful death caused by an automobile accident resulting in damages that exceed Fifteen Thousand Dollars (\$15,000.00) and is brought pursuant to the Florida Wrongful Death Act as codified in Florida Statutes §768.16 through §768.26.

2. Jurisdiction is proper pursuant to Section 48.193(1)(a) and (b), Florida Statutes (2009).

3. Venue is proper in Manatee County, Florida, because this action arises out of a motor vehicle crash that occurred in Manatee County on November 12, 2009.

4. On or about February 14, 2012, Plaintiff TIMOTHY YOUNG was issued Letters of Administration and appointed as Personal Representative of the Estate of ALLEN YOUNG, who was his brother and ward and is now deceased. A copy of said Letters is attached hereto as **Exhibit "A"** and made a part hereof by reference.

5. The survivors of ALLEN YOUNG, as defined in the Florida Wrongful Death Act, Fla. Stat. §768.16, et. Seq., and their relationships to the decedent which are being presented by the Personal Representative include:

- a. The Estate of Allen Young, deceased; and
- b. Allen Young, Jr., Allen Young's son.

6. At all times material hereto, ALLEN YOUNG, deceased, was a resident of Sarasota County, Florida.

7. Upon information and belief, at all times material hereto, Defendant ROGER C. NYBERG was a resident of Manatee County, Florida.

8. Upon information and belief, at all times material hereto, Defendant RONALD E. BAKER was a resident of Pasco County, Florida.

9. Upon information and belief, at all times material hereto, Defendant ROUNTREE TRANSPORT & RIGGING, INC. was a Florida corporation authorized to do business in the State of Florida, and doing business in Manatee County, Florida.

10. Upon information and belief, at all times material hereto, Defendant THE L.E. MYERS COMPANY was a foreign profit corporation authorized to do business in the State of Florida, and doing business in Manatee County, Florida.

11. Upon information and belief, at all times material hereto, Defendant FLORIDA POWER & LIGHT COMPANY was a Florida corporation authorized to do business in the State of Florida, and doing business in Manatee County, Florida.

12. Upon information and belief, at all times material hereto, Defendant CHARLES A. LEFEVRE a/k/a TONY LEFEVRE was a resident of Miami-Dade County.

13. Upon information and belief, at all times material hereto, Defendant PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC. was a Florida corporation authorized to do business in the State of Florida, and doing business in Manatee County, Florida.

14. Upon information and belief, at all times material hereto, Defendant GENERAL MOTORS, LLC was a foreign limited liability company authorized to do business in the State of Florida, and doing business in Manatee County, Florida, and, upon information and belief, assumed the liabilities of General Motors Corporation.

15. On November 12, 2009, ALLEN YOUNG was operating a 1995 Buick motor vehicle, Vehicle Information Number (VIN) 1G4AG55M1S6441883 (“Young Vehicle”), on or in the vicinity of 15th Street East, in Bradenton, Manatee County, Florida.

16. Upon information and belief, on November 12, 2009, ROGER C. NYBERG was the registered owner of a 2005 Chevrolet motor vehicle, Vehicle Identification Number (VIN)

2CNDL13F656021685 (“Nyberg Vehicle”), which he was operating on or in the vicinity of 15th Street East in Bradenton, Manatee County, Florida on November 12, 2009.

17. Upon information and belief, on November 12, 2009, RONALD E. BAKER was the registered owner of a 1998 tractor, Vehicle Identification Number (VIN) 1FUPCSZB3WL964033 (“Baker Vehicle”), which he was operating on or in the vicinity of 15th Street East in Bradenton, Manatee County, Florida on November 12, 2009.

18. Upon information and belief, on November 12, 2009, RONALD E. BAKER was acting as an agent, employee or contractor in furtherance of the business pursuits of ROUNDTREE TRANSPORT & RIGGING, INC. in moving or installing cement utility poles in the vicinity of 15th Street East in Bradenton, Manatee County, Florida.

19. Upon information and belief, on November 12, 2009, RONALD E. BAKER was acting as an agent, employee, contractor, or subcontractor in furtherance of the business pursuits of THE L.E. MYERS COMPANY in moving or installing cement utility poles in the vicinity of 15th Street East in Bradenton, Manatee County, Florida.

20. Upon information and belief, on November 12, 2009, RONALD E. BAKER was acting as an agent, contractor, or subcontractor in furtherance of the business pursuits of FLORIDA POWER & LIGHT COMPANY in moving or installing cement utility poles in the vicinity of 15th Street East in Bradenton, Manatee County, Florida.

21. Upon information and belief, on November 12, 2009, PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC. was acting as an agent, employee, contractor, or subcontractor in furtherance of the business pursuits of THE L.E. MYERS COMPANY in moving or installing cement utility poles and performing other work in the vicinity of 15th Street East in Bradenton, Manatee County, Florida.

22. Upon information and belief, on November 12, 2009, PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC. was acting as an agent, contractor, or subcontractor in furtherance of the business pursuits of FLORIDA POWER & LIGHT COMPANY in moving or installing cement utility poles and performing other work in the vicinity of 15th Street East in Bradenton, Manatee County, Florida.

23. Upon information and belief, on November 12, 2009, CHARLES A. LEFEVRE a/k/a TONY LEFEVRE was acting as an agent, employee, contractor, or subcontractor in furtherance of the business pursuits of PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC. in moving or installing cement utility poles and performing other work in the vicinity of 15th Street East in Bradenton, Manatee County, Florida.

24. Upon information and belief, on November 12, 2009, CHARLES A. LEFEVRE a/k/a TONY LEFEVRE was acting as an agent, employee, contractor, or subcontractor in furtherance of the business pursuits of THE L.E. MYERS COMPANY in moving or installing cement utility poles and performing other work in the vicinity of 15th Street East in Bradenton, Manatee County, Florida.

25. Upon information and belief, on November 12, 2009, CHARLES A. LEFEVRE a/k/a TONY LEFEVRE was acting as an agent, employee, contractor, or subcontractor in furtherance of the business pursuits of FLORIDA POWER & LIGHT COMPANY in moving or installing cement utility poles and performing other work in the vicinity of 15th Street East in Bradenton, Manatee County, Florida.

26. Upon information and belief, on November 12, 2009, ROUNTREE TRANSPORT & RIGGING, INC. was the registered owner of a 1989 trailer, Vehicle Identification Number (VIN) 13N4482C7K1545472 (“Rountree Vehicle”), which Defendant ROUNTREE

TRANSPORT & RIGGING, INC. operated or permitted to be operated in the vicinity of 15th Street East in Bradenton, Manatee County, Florida on November 12, 2009.

27. Upon information and belief, on November 12, 2009, Defendant RONALD E. BAKER was operating the Baker Vehicle and the Rountree Vehicle as a tractor-trailer combination (“Tractor-Trailer”) in the vicinity of 15th Street East in Bradenton, Manatee County, Florida.

28. Upon information and belief, on November 12, 2009, ROUNTREE TRANSPORT & RIGGING, INC.’S agents, apparent agents, servants, employees, contractors owners and/or directors were acting within the course and scope of such relationship and in furtherance of ROUNTREE TRANSPORT & RIGGING, INC.’s, business pursuits by operating or directing the operation of the Rountree Vehicle and the Tractor-Trailer and by assisting in moving or installing a cement utility pole in the vicinity of 15th Street East in Bradenton, Manatee County, Florida.

29. Upon information and belief, on November 12, 2009, ROUNTREE TRANSPORT & RIGGING, INC. was acting as an agent, employee or contractor in furtherance of the business pursuits of THE L.E. MYERS COMPANY in moving or installing cement utility poles in the vicinity of 15th Street East in Bradenton, Manatee County, Florida.

30. Upon information and belief, on November 12, 2009, ROUNTREE TRANSPORT & RIGGING, INC. was acting as an agent, contractor, or subcontractor in furtherance of the business pursuits of FLORIDA POWER & LIGHT COMPANY in moving or installing cement utility poles in the vicinity of 15th Street East in Bradenton, Manatee County, Florida.

31. Upon information and belief, on November 12, 2009, THE L.E. MYERS COMPANY’s agents, apparent agents, servants, employees, managers, owners and/or directors were acting within the course and scope of such relationship and in furtherance of THE L.E.

MYERS COMPANY'S business pursuits by assisting in or directing the operation of the Rountree Vehicle and the Tractor-Trailer.

32. Upon information and belief, on November 12, 2009, THE L.E. MYERS COMPANY's agents, apparent agents, servants, employees, managers, owners and/or directors were acting within the course and scope of such relationship and in furtherance of THE L.E. MYERS COMPANY'S business pursuits by assisting in or directing the moving or installation of a cement utility pole in the vicinity of 15th Street East in Bradenton, Manatee County, Florida.

33. Upon information and belief, on November 12, 2009, THE L.E. MYERS COMPANY was responsible for a project on 15th Street East in Bradenton, Florida involving the installation of cement utility poles ("Project").

34. Upon information and belief, on November 12, 2009, THE L.E. MYERS COMPANY was acting as an agent or contractor in furtherance of the business pursuits of FLORIDA POWER & LIGHT COMPANY in moving or installing cement utility poles in the vicinity of 15th Street East in Bradenton, Manatee County, Florida.

35. Upon information and belief, on November 12, 2009, FLORIDA POWER & LIGHT COMPANY's agents, apparent agents, servants, employees, contractors, subcontractors, owners and/or directors were acting within the course and scope of such relationship and in furtherance of FLORIDA POWER & LIGHT COMPANY'S business pursuits by assisting in or directing the operation of the Rountree Vehicle and the Tractor-Trailer.

36. Upon information and belief, on November 12, 2009, FLORIDA POWER & LIGHT COMPANY's agents, apparent agents, servants, employees, contractors, subcontractors, owners and/or directors were acting within the course and scope of such relationship and in furtherance of FLORIDA POWER & LIGHT COMPANY'S business pursuits by assisting in or

directing the moving or installation of a cement utility pole in the vicinity of 15th Street East in Bradenton, Manatee County, Florida.

37. Upon information and belief, on or about November 12, 2009, FLORIDA POWER & LIGHT was responsible for a project on 15th Street East in Bradenton, Florida involving the installation of cement utility poles (“Project”).

38. Upon information and belief, on November 12, 2009, PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC.’s agents, apparent agents, servants, employees, owners and/or directors were acting within the course and scope of such relationship and in furtherance of PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC. business pursuits by assisting in or directing the operation of the Rountree Vehicle and the Tractor-Trailer.

39. Upon information and belief, on November 12, 2009, PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC.’s agents, apparent agents, servants, employees, owners and/or directors were acting within the course and scope of such relationship and in furtherance of PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC.’S business pursuits by assisting in or directing the moving or installation of a cement utility pole in the vicinity of 15th Street East in Bradenton, Manatee County, Florida.

40. The performance of, and work related to, the Project involved inherently dangerous activities and a risk of harm to the public, including ALLEN YOUNG.

41. On November 12, 2009, PALM BEACH TRUCKING, LLC d/b/a MERCHANT TRANSPORT, INC. and CHARLES A. LEFEVRE a/k/a TONY LEFEVRE breached their duties to the public, including ALLEN YOUNG, in moving or installing cement utility poles and

performing other work in the vicinity of 15th Street East in Bradenton, Manatee County, Florida, negligently causing a collision involving the Young vehicle.

COUNT I
NEGLIGENCE OF ROGER C. NYBERG

42. Plaintiff realleges and incorporates by reference paragraphs 1 through 40 above.

43. At all times material hereto, ROGER C. NYBERG owed to the public and to ALLEN YOUNG a non-delegable duty to exercise reasonable care in the operation and maintenance of the Nyberg Vehicle.

44. On or about November 12, 2009, ROGER C. NYBERG breached his duty to the public and to ALLEN YOUNG by failing to operate the Nyberg Vehicle in a safe manner on 15th Street East, thereby causing or permitting the Nyberg Vehicle to collide with the Young Vehicle.

45. As a direct and proximate result of the negligence of the Defendant ROGER C. NYBERG, ALLEN YOUNG suffered traumatic bodily injury. As a direct and proximate result of this traumatic bodily injury, ALLEN YOUNG died.

46. As a direct and proximate result of the negligence of Defendant ROGER C. NYBERG, ALLEN YOUNG's survivors and beneficiaries suffered the following damages, which are compensable under Florida's Wrongful Death Statute, §768.21:

- a. Loss of support and services from the date of injury to the date of death, with interest, and future loss of support and services from the date of death;
- b. Loss of parental companionship, instruction, and guidance and damages for mental pain and suffering;
- c. Loss of earnings from the date of injury to the date of death, with interest, and loss of the prospective net accumulations of Allen Young, reduced to present value;
- d. Medical and funeral expenses that have or may become charged against the Estate or that were paid by or on behalf of Allen Young due to his death; and
- e. All other compensable damages pursuant to Section 768.21, Florida Statutes.

WHEREFORE, Plaintiff, TIMOTHY YOUNG, as Personal Representative of the Estate of Allen Young, deceased, demands judgment in excess of \$15,000.00 for damages against

Defendant, ROGER C. NYBERG, plus attorney's fees where applicable, costs, and interest on that portion of the claim constituting liquidated damages and trial by jury.

COUNT II
NEGLIGENCE OF RONALD E. BAKER

47. Plaintiff realleges and incorporates by reference paragraphs 1 through 40 above.

48. At all times material hereto, RONALD E. BAKER owed to the public and to ALLEN YOUNG a non-delegable duty to exercise reasonable care in the operation and maintenance of the Baker Vehicle and the Tractor-Trailer.

49. On or about November 12, 2009, RONALD E. BAKER breached his duty to the public and to ALLEN YOUNG by permitting or causing the Baker Vehicle and the Tractor-Trailer to be operated or parked in the path of traffic on 15th Street East, thereby causing a collision with the Young Vehicle.

50. As a direct and proximate result of the negligence of the Defendant RONALD E. BAKER, ALLEN YOUNG suffered traumatic bodily injury. As a direct and proximate result of this traumatic bodily injury, ALLEN YOUNG died.

51. As a direct and proximate result of the negligence of Defendant RONALD E. BAKER, ALLEN YOUNG's survivors and beneficiaries suffered the following damages, which are compensable under Florida's Wrongful Death Statute, §768.21:

- a. Loss of support and services from the date of injury to the date of death, with interest, and future loss of support and services from the date of death;
- b. Loss of parental companionship, instruction, and guidance and damages for mental pain and suffering;
- c. Loss of earnings from the date of injury to the date of death, with interest, and loss of the prospective net accumulations of Allen Young, reduced to present value;
- d. Medical and funeral expenses that have or may become charged against the Estate or that were paid by or on behalf of Allen Young due to his death; and
- e. All other compensable damages pursuant to Section 768.21, Florida Statutes.

WHEREFORE, Plaintiff, TIMOTHY YOUNG, as Personal Representative of the Estate of Allen Young, deceased, demands judgment in excess of \$15,000.00 for damages against Defendant, RONALD E. BAKER, plus attorney's fees where applicable, costs, and interest on that portion of the claim constituting liquidated damages and trial by jury.

COUNT III
NEGLIGENCE OF ROUNTREE TRANSPORT & RIGGING, INC.

52. Plaintiff realleges and incorporates by reference paragraphs 1 through 40 above.

53. At all times material hereto, ROUNTREE TRANSPORT & RIGGING, INC. owed to the public and to ALLEN YOUNG a non-delegable duty to exercise reasonable care in the operation and maintenance of the Rountree Vehicle, and to ensure that the Rountree Vehicle was operated in accordance with the laws of the State of Florida.

54. At all times material hereto, ROUNTREE TRANSPORT & RIGGING, INC., was directly liable for its own negligent acts and omissions and was vicariously liable for the negligent acts and omissions of its agents, apparent agents, servants, employees, contractors, owners and/or directors acting within the course and scope of such relationship and in furtherance of ROUNTREE TRANSPORT & RIGGING, INC.'s, business pursuits.

55. Upon information and belief, on or about November 12, 2009, ROUNTREE TRANSPORT & RIGGING, INC. breached its duty to the public and to Plaintiff, ALLEN YOUNG, directly and vicariously, by permitting or causing the Rountree Vehicle and the Tractor-Trailer to be operated in a negligent manner, including permitting or causing the Rountree Vehicle and the Tractor-Trailer to be operated or parked in the path of traffic on 15th Street East, and in assisting with the movement or installation of, or directing the placement of, a cement utility pole in the vicinity of the crash, thereby causing a collision with the Young Vehicle.

56. By virtue of Florida's Dangerous Instrumentality Doctrine and the Doctrine of Respondeat Superior, ROUNTREE TRANSPORT & RIGGING, INC. is responsible for the actions of ROUNTREE TRANSPORT & RIGGING, INC.'s employees, servants, agents, apparent agents, owners and/or directors, including but not limited to their negligent operation or direction.

57. As a direct and proximate result of the negligence of the Defendant ROUNTREE TRANSPORT & RIGGING, INC., ALLEN YOUNG suffered traumatic bodily injury. As a direct and proximate result of this traumatic bodily injury, ALLEN YOUNG died.

58. As a direct and proximate result of the negligence of Defendant ROUNTREE TRANSPORT & RIGGING, INC., ALLEN YOUNG's survivors and beneficiaries suffered the following damages, which are compensable under Florida's Wrongful Death Statute, §768.21:

- a. Loss of support and services from the date of injury to the date of death, with interest, and future loss of support and services from the date of death;
- b. Loss of parental companionship, instruction, and guidance and damages for mental pain and suffering;
- c. Loss of earnings from the date of injury to the date of death, with interest, and loss of the prospective net accumulations of Allen Young, reduced to present value;
- d. Medical and funeral expenses that have or may become charged against the Estate or that were paid by or on behalf of Allen Young due to his death; and
- e. All other compensable damages pursuant to Section 768.21, Florida Statutes.

WHEREFORE, Plaintiff, TIMOTHY YOUNG, as Personal Representative of the Estate of Allen Young, deceased, demands judgment in excess of \$15,000.00 for damages against Defendant, ROUNTREE TRANSPORT & RIGGING, INC., plus attorney's fees where applicable, costs, and interest on that portion of the claim constituting liquidated damages and trial by jury.

COUNT IV
NEGLIGENT SELECTION, HIRING, AND TRAINING
BY ROUNTREE TRANSPORT & RIGGING, INC.

59. Plaintiff realleges and incorporates by reference paragraphs 1 through 40, 49 and 50 above.

60. At all times material hereto, ROUNTREE TRANSPORT & RIGGING, INC. owed duties to the public and to Plaintiff, ALLEN YOUNG, to exercise reasonable care in the operation of the Rountree vehicle and in moving or installing cement utility poles on or near 15th Street East in Bradenton, Manatee County, Florida.

61. Upon information and belief, on or about November 12, 2009, RONALD BAKER was operating as an employee or contractor for ROUNTREE TRANSPORT & RIGGING, INC. relating to the moving or installation of cement utility poles on or near 15th Street East in Bradenton, Manatee County, Florida, and in that role, was hired to perform duties owed to the public and to ALLEN YOUNG by ROUNTREE TRANSPORT & RIGGING, INC.

62. The moving and installation of the cement utility poles on or about November 12, 2009 involved inherently dangerous activities and a risk of harm to the public, including ALLEN YOUNG, unless skillfully and carefully performed.

63. RONALD BAKER was incompetent or unfit to perform the work for which he was hired to perform.

64. ROUNTREE TRANSPORT & RIGGING, INC. knew, or should have known, that RONALD BAKER was incompetent or unfit to perform the work for which he was hired to perform. Additionally, ROUNTREE TRANSPORT & RIGGING, INC. was negligent in providing inadequate, or failing to provide proper, training relating to the performance of the work for which he was hired to perform.

65. As a direct and proximate result of the negligence of the Defendant ROUNTREE TRANSPORT & RIGGING, INC., ALLEN YOUNG suffered traumatic bodily injury. As a direct and proximate result of this traumatic bodily injury, ALLEN YOUNG died.

66. As a direct and proximate result of the negligence of Defendant ROUNTREE TRANSPORT & RIGGING, INC., ALLEN YOUNG's survivors and beneficiaries suffered the following damages, which are compensable under Florida's Wrongful Death Statute, §768.21:

- a. Loss of support and services from the date of injury to the date of death, with interest, and future loss of support and services from the date of death;
- b. Loss of parental companionship, instruction, and guidance and damages for mental pain and suffering;
- c. Loss of earnings from the date of injury to the date of death, with interest, and loss of the prospective net accumulations of Allen Young, reduced to present value;
- d. Medical and funeral expenses that have or may become charged against the Estate or that were paid by or on behalf of Allen Young due to his death; and
- e. All other compensable damages pursuant to Section 768.21, Florida Statutes.

WHEREFORE, Plaintiff, TIMOTHY YOUNG, as Personal Representative of the Estate of Allen Young, deceased, demands judgment in excess of \$15,000.00 for damages against Defendant, ROUNTREE TRANSPORT & RIGGING, INC., plus attorney's fees where applicable, costs, and interest on that portion of the claim constituting liquidated damages and trial by jury.

COUNT V
NEGLIGENCE OF THE L.E. MYERS COMPANY

67. Plaintiff realleges and incorporates by reference paragraphs 1 through 41, 49 and 55 above.

68. At all times material hereto, THE L.E. MYERS COMPANY owed to the public and to Plaintiff, ALLEN YOUNG, a non-delegable duty to exercise reasonable care in operating and directing the Project and ensuring that the laws of the State of Florida were followed in the performance of the Project.

69. At all times material hereto, THE L.E. MYERS COMPANY was directly liable for its own negligent acts and omissions and was vicariously liable for the negligent acts and omissions of its agents, apparent agents, servants, employees, contractors, subcontractors, owners and/or directors acting within the course and scope of such relationship and in furtherance of THE L.E. MYERS COMPANY's business pursuits.

70. Upon information and belief, on or about November 12, 2009, THE L.E. MYERS COMPANY breached its duty to the public and to Plaintiff, ALLEN YOUNG, directly and vicariously, by permitting or causing the Rountree Vehicle and the Tractor-Trailer to be operated in a negligent manner, including permitting or causing the Rountree Vehicle and the Tractor-Trailer to be operated or parked in the path of traffic on 15th Street East, and in permitting or assisting with the movement or installation of, or directing the placement of, a cement utility pole in the vicinity of the crash, thereby causing a collision with the Young Vehicle.

71. By virtue of Florida's Doctrine of Respondeat Superior, THE L.E. MYERS COMPANY is responsible for the actions of THE L.E. MYERS COMPANY's employees, servants, agents, apparent agents, owners and/or directors, including but not limited to their negligent operation or direction.

72. The Project required very specific maintenance of traffic signs and traffic control devices, including a lane closure.

73. THE L.E. MYERS COMPANY, including its employees, agents, representatives, officers, directors, contractors and subcontractors, was required to follow the appropriate maintenance of traffic standards and place signs and traffic control devices in specific locations.

74. In bidding to get the job from FLORIDA POWER & LIGHT COMPANY, THE L.E. MYERS COMPANY, a sophisticated company with experience and knowledge in utility construction projects and the requisite maintenance of traffic, included in its bid package a line item for maintenance of traffic, anticipating paying another company or entity to perform certain maintenance of traffic activities.

75. If THE L.E. MYERS COMPANY had closed down the southbound lane of travel on 15th Street East on November 12, 2009, as was required, it may have had to pay a separate company or entity to perform that work.

76. Instead, THE L.E. MYERS COMPANY made a conscious decision not to shut down the southbound lane of travel on 15th Street East on November 12, 2009, keeping money that had been designated for maintenance of traffic in its bid documents.

77. THE L.E. MYERS COMPANY and its employees, managers and agents, prior to and on November 12, 2009, knew that the performance of the Project required traffic control and a lane closure and that performance of the Project created certain hazards, risks and potential for injury to the traveling public, which included ALLEN YOUNG.

78. THE L.E. MYERS COMPANY, including its employees, managers and agents, knew that the southbound lane of travel on 15th Street East in Bradenton, Florida should have been shut down prior to the crash.

79. THE L.E. MYERS COMPANY, including its employees, managers and agents, knew that flagmen and specific traffic control devices and signs should have been placed in specific locations on or near 15th Street East in Bradenton, Florida prior to the crash.

80. THE L.E. MYERS COMPANY, including its employees, managers and agents, prior to and on November 12, 2009, knew that a traffic control plan was necessary in performing the Project and that the traffic control plan was to be followed and was intended to prevent accidents and injuries to the traveling public, which included ALLEN YOUNG.

81. Despite this knowledge, THE L.E. MYERS COMPANY, including its employees, managers and agents, made the decisions not to implement appropriate maintenance of traffic, not to shut down the southbound lane of travel on 15th Street East prior to the crash, and not to place flagmen and requisite traffic control devices and signs in specific locations on or near 15th Street East in Bradenton, Florida prior to the crash.

82. THE L.E. MYERS COMPANY and its employees, managers and agents, including its own safety supervisor, Tommy Byrd, and job foreman, Rusty Maxwell, admit that a lane was not closed down at the time of the crash.

83. THE L.E. MYERS COMPANY'S safety supervisor, Tommy Byrd, who was present at the time of the crash, knew that a lane of travel should have been closed and that specific traffic control devices and signs were required.

84. In an attempt to cover up THE L.E. MYERS COMPANY'S known failures regarding maintenance of traffic, Tommy Byrd told George Pennell, the FLORIDA POWER & LIGHT COMPANY Supervisor overseeing the Project, that he shut down a lane of travel.

85. However, Tommy Byrd did not shut down a lane of travel.

86. In an attempt to cover up THE L.E. MYERS COMPANY'S known failures regarding maintenance of traffic, Tommy Byrd told George Pennell that he was acting as a flagman flagging traffic at the time of the crash.

87. However, Tommy Byrd was not flagging traffic at the time of the crash.

88. Due in part to THE L.E. MYERS COMPANY'S failure to implement an appropriate maintenance of traffic plan, ALLEN YOUNG was severely injured, forcing him to live in hospitals and 24-hour care living facilities for more than two years without the ability to fully use his arms or legs, finally succumbing to his injuries in 2012.

89. Such conduct by THE L.E. MYERS COMPANY and its employees and managers, which caused bodily injury and the death of ALLEN YOUNG:

- a) Was intentional considering THE L.E. MYERS COMPANY's actual knowledge of the wrongfulness of their conduct and the high probability that injury or death to ALLEN YOUNG would result, and despite that knowledge, THE L.E. MYERS COMPANY intentionally pursued that course of conduct; or
- b) Was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct including ALLEN YOUNG; and
- c) THE L.E. MYERS COMPANY actively or knowingly participated in such conduct; or
- d) The officers, directors, or managers of THE L.E. MYERS COMPANY knowingly condoned, ratified, or consented to such conduct; or
- e) THE L.E. MYERS COMPANY engaged in conduct that constituted gross negligence and that contributed to the injuries and death of ALLEN YOUNG.

90. As a direct and proximate result of the negligence of THE L.E. MYERS COMPANY, ALLEN YOUNG suffered traumatic bodily injury. As a direct and proximate result of this traumatic bodily injury, ALLEN YOUNG died.

91. As a direct and proximate result of the negligence of Defendant THE L.E. MYERS COMPANY, ALLEN YOUNG's survivors and beneficiaries suffered the following damages, which are compensable under Florida's Wrongful Death Statute, §768.21:

- a. Loss of support and services from the date of injury to the date of death, with interest, and future loss of support and services from the date of death;
- b. Loss of parental companionship, instruction, and guidance and damages for mental pain and suffering;
- c. Loss of earnings from the date of injury to the date of death, with interest, and loss of the prospective net accumulations of Allen Young, reduced to present value;
- d. Medical and funeral expenses that have or may become charged against the Estate or that were paid by or on behalf of Allen Young due to his death; and
- e. All other compensable damages pursuant to Section 768.21, Florida Statutes.

WHEREFORE, Plaintiff, TIMOTHY YOUNG, as Personal Representative of the Estate of Allen Young, deceased, demands judgment in excess of \$15,000.00 for damages against Defendant, THE L.E. MYERS COMPANY, plus punitive damages, attorney's fees where applicable, costs, and interest on that portion of the claim constituting liquidated damages and trial by jury.

COUNT VI
NEGLIGENT SELECTION, HIRING, AND TRAINING
BY THE L.E. MYERS COMPANY

92. Plaintiff realleges and incorporates by reference paragraphs 1 through 41, 49, 50, 55 and 57.

93. At all times material hereto, THE L.E. MYERS COMPANY owed duties to the public and to Plaintiff, ALLEN YOUNG, to exercise reasonable care in operating and directing

the Project and ensuring that the laws of the State of Florida were followed in the performance of the Project.

94. Upon information and belief, on or about November 12, 2009, RONALD BAKER was operating as a contractor or subcontractor for THE L.E. MYERS COMPANY relating to the moving or installation of cement utility poles on or near 15th Street East in Bradenton, Manatee County, Florida, and in that role, was hired to perform duties owed to the public and to ALLEN YOUNG by THE L.E. MYERS COMPANY.

95. Upon information and belief, on or about November 12, 2009, ROUNDTREE TRANSPORT & RIGGING, INC. was operating as a contractor for THE L.E. MYERS COMPANY relating to the moving or installation of cement utility poles on or near 15th Street East in Bradenton, Manatee County, Florida, and in that role, was hired to perform duties owed to the public and to Plaintiff, ALLEN YOUNG, by THE L.E. MYERS COMPANY.

96. Upon information and belief, on or about November 12, 2009, CHARLES A. LEFEVRE a/k/a TONY LEFEVRE was operating as a contractor or subcontractor for THE L.E. MYERS COMPANY relating to the moving or installation of cement utility poles on or near 15th Street East in Bradenton, Manatee County, Florida, and in that role, was hired to perform duties owed to the public and to ALLEN YOUNG by THE L.E. MYERS COMPANY.

97. Upon information and belief, on or about November 12, 2009, PALM BEACH TRUCKING d/b/a MERCHANT TRANSPORT, INC. was operating as a contractor for the THE L.E. MYERS COMPANY relating to the moving or installation of cement utility poles on or near 15th Street East in Bradenton, Manatee County, Florida, and in that role, was hired to perform duties owed to the public and to Plaintiff, ALLEN YOUNG, by THE L.E. MYERS COMPANY.

98. The moving and installation of the cement utility poles on or about November 12, 2009 involved inherently dangerous activities and a risk of harm to the public, including ALLEN YOUNG, unless skillfully and carefully performed.

99. RONALD BAKER was incompetent or unfit to perform the work for which he was hired to perform.

100. ROUNTREE TRANSPORT & RIGGING, INC. was incompetent or unfit to perform the work for which it was hired to perform.

101. CHARLES A. LEFEVRE a/k/a TONY LEFEVRE was incompetent or unfit to perform the work for which he was hired to perform.

102. PALM BEACH TRUCKING, d/b/a MERCHANT TRANSPORT INC. was incompetent or unfit to perform the work for which it was hired to perform.

103. THE L.E. MYERS COMPANY knew, or should have known, that RONALD BAKER, ROUNTREE TRANSPORT & RIGGING, INC., CHARLES A. LEFEVRE a/k/a TONY LEFEVRE and PALM BEACH TRUCKING, d/b/a MERCHANT TRANSPORT INC. were incompetent or unfit to perform the work for which each was hired to perform. Additionally, THE L.E. MYERS COMPANY was negligent in providing inadequate, or failing to provide proper, training to its employees, agents, contractors and subcontractors relating to the work for which they were hired to perform.

104. As a direct and proximate result of the negligence of the Defendant THE L.E. MYERS COMPANY, ALLEN YOUNG suffered traumatic bodily injury. As a direct and proximate result of this traumatic bodily injury, ALLEN YOUNG died.

105. As a direct and proximate result of the negligence of Defendant THE L.E. MYERS COMPANY, ALLEN YOUNG's survivors and beneficiaries suffered the following damages, which are compensable under Florida's Wrongful Death Statute, §768.21:

- a. Loss of support and services from the date of injury to the date of death, with interest, and future loss of support and services from the date of death;
- b. Loss of parental companionship, instruction, and guidance and damages for mental pain and suffering;
- c. Loss of earnings from the date of injury to the date of death, with interest, and loss of the prospective net accumulations of Allen Young, reduced to present value;
- d. Medical and funeral expenses that have or may become charged against the Estate or that were paid by or on behalf of Allen Young due to his death; and
- e. All other compensable damages pursuant to Section 768.21, Florida Statutes.

WHEREFORE, Plaintiff, TIMOTHY YOUNG, as Personal Representative of the Estate of Allen Young, deceased, demands judgment in excess of \$15,000.00 for damages against Defendant, THE L.E. MYERS COMPANY, plus attorney's fees where applicable, costs, and interest on that portion of the claim constituting liquidated damages and trial by jury.

COUNT VII
NEGLIGENCE OF FLORIDA POWER & LIGHT COMPANY

106. Plaintiff realleges and incorporates by reference paragraphs 1 through 41, 49, 55 and 70 above.

107. At all times material hereto, FLORIDA POWER & LIGHT COMPANY owed to the public and to Plaintiff, ALLEN YOUNG, a non-delegable duty to exercise reasonable care in operating and directing the Project and ensuring that the laws of the State of Florida were followed in the performance of the Project.

108. The performance of, and work related to, the Project involved inherently dangerous activities and a risk of harm to the public, including ALLEN YOUNG.

109. At all times material hereto, FLORIDA POWER & LIGHT COMPANY was directly liable for its own negligent acts and omissions and was vicariously liable for the negligent

acts and omissions of its agents, apparent agents, servants, employees, contractors, subcontractors, owners and/or directors acting within the course and scope of such relationship and in furtherance of FLORIDA POWER & LIGHT COMPANY's, business pursuits.

110. Upon information and belief, on or about November 12, 2009, FLORIDA POWER & LIGHT COMPANY breached its duty to the public and to ALLEN YOUNG, directly and vicariously, in planning and overseeing the project and permitting or causing the Rountree Vehicle and the Tractor-Trailer to be operated in a negligent manner, including permitting or causing the Rountree Vehicle and the Tractor-Trailer to be operated or parked in the path of traffic on 15th Street East, and in permitting or assisting with the movement or installation of, or directing the placement of, a cement utility pole in the vicinity of the crash, thereby causing a collision with the Young Vehicle.

111. By virtue of Florida's Doctrine of Respondeat Superior, FLORIDA POWER & LIGHT COMPANY is responsible for the actions of FLORIDA POWER & LIGHT COMPANY's employees, servants, agents, apparent agents, owners and/or directors, including but not limited to their negligent operation or direction.

112. As a direct and proximate result of the negligence of the Defendant FLORIDA POWER & LIGHT COMPANY, ALLEN YOUNG suffered traumatic bodily injury. As a direct and proximate result of this traumatic bodily injury, ALLEN YOUNG died.

113. As a direct and proximate result of the negligence of Defendant FLORIDA POWER & LIGHT COMPANY, ALLEN YOUNG's survivors and beneficiaries suffered the following damages, which are compensable under Florida's Wrongful Death Statute, §768.21:

- a. Loss of support and services from the date of injury to the date of death, with interest, and future loss of support and services from the date of death;
- b. Loss of parental companionship, instruction, and guidance and damages for mental pain and suffering;

- c. Loss of earnings from the date of injury to the date of death, with interest, and loss of the prospective net accumulations of Allen Young, reduced to present value;
- d. Medical and funeral expenses that have or may become charged against the Estate or that were paid by or on behalf of Allen Young due to his death; and
- e. All other compensable damages pursuant to Section 768.21, Florida Statutes.

WHEREFORE, Plaintiff, TIMOTHY YOUNG, as Personal Representative of the Estate of Allen Young, deceased, demands judgment in excess of \$15,000.00 for damages against Defendant, FLORIDA POWER & LIGHT COMPANY, plus attorney's fees where applicable, costs, and interest on that portion of the claim constituting liquidated damages and trial by jury.

COUNT VIII
NEGLIGENT SELECTION AND HIRING
BY FLORIDA POWER & LIGHT COMPANY

114. Plaintiff realleges and incorporates by reference paragraphs 1 through 41, 49, 50, 55, 57, 70 and 90 above.

115. At all times material hereto, FLORIDA POWER & LIGHT COMPANY owed duties to the public and to Plaintiff, ALLEN YOUNG, to exercise reasonable care in operating and directing the Project and ensuring that the laws of the State of Florida were followed in the performance of the Project.

116. Upon information and belief, on or about November 12, 2009, THE L.E. MYERS COMPANY was operating as a contractor for FLORIDA POWER & LIGHT COMPANY relating to the moving or installation of cement utility poles on or near 15th Street East in Bradenton, Manatee County, Florida, and in that role, was hired to perform duties owed to the public and to Plaintiff, ALLEN YOUNG, by FLORIDA POWER & LIGHT COMPANY.

117. The moving and installation of the cement utility poles on or about November 12, 2009 involved inherently dangerous activity and a risk of harm to the public, including Plaintiff, ALLEN YOUNG, unless skillfully and carefully performed.

118. THE L.E. MYERS COMPANY was incompetent or unfit to perform the work for which it was hired to perform.

119. FLORIDA POWER & LIGHT COMPANY knew, or should have known, that THE L.E. MYERS COMPANY was incompetent or unfit to perform the work for which each was hired to perform.

120. As a direct and proximate result of the negligence of the Defendant FLORIDA POWER & LIGHT COMPANY, ALLEN YOUNG suffered traumatic bodily injury. As a direct and proximate result of this traumatic bodily injury, ALLEN YOUNG died.

121. As a direct and proximate result of the negligence of Defendant FLORIDA POWER & LIGHT COMPANY, ALLEN YOUNG's survivors and beneficiaries suffered the following damages, which are compensable under Florida's Wrongful Death Statute, §768.21:

- a. Loss of support and services from the date of injury to the date of death, with interest, and future loss of support and services from the date of death;
- b. Loss of parental companionship, instruction, and guidance and damages for mental pain and suffering;
- c. Loss of earnings from the date of injury to the date of death, with interest, and loss of the prospective net accumulations of Allen Young, reduced to present value;
- d. Medical and funeral expenses that have or may become charged against the Estate or that were paid by or on behalf of Allen Young due to his death; and
- e. All other compensable damages pursuant to Section 768.21, Florida Statutes.

WHEREFORE, Plaintiff, TIMOTHY YOUNG, as Personal Representative of the Estate of Allen Young, deceased, demands judgment in excess of \$15,000.00 for damages against Defendant, FLORIDA POWER & LIGHT COMPANY, plus attorney's fees where applicable, costs, and interest on that portion of the claim constituting liquidated damages and trial by jury.

COUNT IX
NEGLIGENCE OF CHARLES A. LEFEVRE a/k/a TONY LEFEVRE

122. Plaintiff realleges and incorporates by reference paragraphs 1 through 41 above.

123. On November 12, 2009, CHARLES A. LEFEVRE a/k/a TONY LEFEVRE parked and operated a crane (“Merchant Crane”) in the vicinity of the crash as part of the work performed during the Project.

124. At all times material hereto, CHARLES A. LEFEVRE a/k/a TONY LEFEVRE owed to the public and to ALLEN YOUNG a non-delegable duty to exercise reasonable care in the operation and maintenance of the Merchant Crane.

125. On or about November 12, 2009, CHARLES A. LEFEVRE a/k/a TONY LEFEVRE breached his duty to the public and to ALLEN YOUNG by permitting or causing the Merchant Crane to be operated in a negligent manner, including permitting or causing the Merchant Crane to be operated or parked near the path of traffic on 15th Street East, and in assisting with the movement or installation of, or directing the placement of, a cement utility pole in the vicinity of the crash, thereby causing a collision with the Young Vehicle.

126. As a direct and proximate result of the negligence of Defendant CHARLES A. LEFEVRE a/k/a TONY LEFEVRE, ALLEN YOUNG suffered traumatic bodily injury. As a direct and proximate result of this traumatic bodily injury, ALLEN YOUNG died.

127. As a direct and proximate result of the negligence of Defendant CHARLES A. LEFEVRE a/k/a TONY LEFEVRE, ALLEN YOUNG’s survivors and beneficiaries suffered the following damages, which are compensable under Florida’s Wrongful Death Statute, §768.21:

- a. Loss of support and services from the date of injury to the date of death, with interest, and future loss of support and services from the date of death;
- b. Loss of parental companionship, instruction, and guidance and damages for mental pain and suffering;
- c. Loss of earnings from the date of injury to the date of death, with interest, and loss of the prospective net accumulations of Allen Young, reduced to present value;
- d. Medical and funeral expenses that have or may become charged against the Estate or that were paid by or on behalf of Allen Young due to his death; and
- e. All other compensable damages pursuant to Section 768.21, Florida Statutes.

WHEREFORE, Plaintiff, TIMOTHY YOUNG, as Personal Representative of the Estate of Allen Young, deceased, demands judgment in excess of \$15,000.00 for damages against Defendant, CHARLES A. LEFEVRE a/k/a TONY LEFEVRE, plus attorney's fees where applicable, costs, and interest on that portion of the claim constituting liquidated damages and trial by jury.

COUNT X
NEGLIGENCE OF PALM BEACH TRUCKING, LLC,
D/B/A MERCHANT TRANSPORT, INC.

128. Plaintiff realleges and incorporates by reference paragraphs 1 through 41, 125 and 126 above.

129. On November 12, 2009, PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC., parked and operated a vehicle and crane ("Merchant Crane") in the vicinity of the subject crash as part of the work performed during the Project.

130. At all times material hereto, PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC. owed to the public and to ALLEN YOUNG a non-delegable duty to exercise reasonable care in the operation and maintenance of the Merchant Crane, and to ensure that the Merchant Crane was operated in accordance with the laws of the State of Florida.

131. At all times material hereto, PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC., was directly liable for its own negligent acts and omissions and was vicariously liable for the negligent acts and omissions of its agents, apparent agents, servants, employees, contractors, subcontractors, owners and/or directors acting within the course and scope of such relationship and in furtherance of PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC.'S business pursuits.

132. Upon information and belief, on November 12, 2009, PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC. breached its duty to the public and to Plaintiff, ALLEN YOUNG, directly and vicariously, by permitting or causing the Merchant Crane to be operated in a negligent manner, including permitting or causing the Merchant Crane to be operated or parked near the path of traffic on 15th Street East, and in assisting with the movement or installation of, or directing the placement of, a cement utility pole in the vicinity of the crash, thereby causing a collision with the Young Vehicle.

133. By virtue of Florida's Dangerous Instrumentality Doctrine and the Doctrine of Respondeat Superior, PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC. is responsible for the actions of PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC.'S employees, servants, agents, apparent agents, owners and/or directors, including but not limited to their negligent operation or direction.

134. As a direct and proximate result of the negligence of the Defendant PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC., ALLEN YOUNG, ALLEN YOUNG suffered traumatic bodily injury. As a direct and proximate result of this traumatic bodily injury, ALLEN YOUNG died.

135. As a direct and proximate result of the negligence of Defendant PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC., ALLEN YOUNG's survivors and beneficiaries suffered the following damages, which are compensable under Florida's Wrongful Death Statute, §768.21:

- a. Loss of support and services from the date of injury to the date of death, with interest, and future loss of support and services from the date of death;
- b. Loss of parental companionship, instruction, and guidance and damages for mental pain and suffering;
- c. Loss of earnings from the date of injury to the date of death, with interest, and loss of the prospective net accumulations of Allen Young, reduced to present value;

- d. Medical and funeral expenses that have or may become charged against the Estate or that were paid by or on behalf of Allen Young due to his death; and
- e. All other compensable damages pursuant to Section 768.21, Florida Statutes.

WHEREFORE, Plaintiff, TIMOTHY YOUNG, as Personal Representative of the Estate of Allen Young, deceased, demands judgment in excess of \$15,000.00 for damages against Defendant, PALM BEACH TRUCKING, LLC, d/b/a MERCHANT TRANSPORT, INC., plus attorney's fees where applicable, costs, and interest on that portion of the claim constituting liquidated damages and trial by jury.

COUNT XI
STRICT LIABILITY- DESIGN DEFECT
AGAINST GENERAL MOTORS CORPORATION

136. Plaintiff realleges and incorporates by reference paragraphs 1 through 40 above.

137. At all times relevant hereto, GENERAL MOTORS CORPORATION was the manufacturer, designer, distributor, seller and/or supplier of the Nyberg Vehicle and placed this product into the stream of commerce in a defective and unreasonably dangerous condition such that the foreseeable risks exceeded the benefits associated with the design or formulation.

138. The Nyberg Vehicle was intended for use by consumers as a vehicle to be used on public roadways, and GENERAL MOTORS CORPORATION expected the Nyberg Vehicle to reach, and it did reach, consumers in the State of Florida, including ROGER NYBERG and ALLEN YOUNG, upon information and belief, without substantial change in the condition in which it was sold and without being materially altered or modified prior to implantation.

139. Upon information and belief, and according to allegations by ROGER NYBERG, the accelerator of the Nyberg Vehicle stuck, causing ROGER NYBERG to lose control of the Nyberg Vehicle and to crash into the Young Vehicle.

140. Upon information and belief, the Nyberg Vehicle was defectively designed, manufactured, and/or tested so as to be unreasonably dangerous to consumers and to ALLEN YOUNG at the time it was placed into the stream of commerce because:

- a) The foreseeable risks exceeded the benefits;
- b) The product had unreasonably dangerous design and manufacturing defects and was not reasonably safe for its intended use; and
- c) When placed in the stream of commerce, the product failed to comply with federal requirements and perform as intended.

141. ROGER NYBERG was a foreseeable and expected user of the Nyberg Vehicle, and the Nyberg Vehicle was, upon information and belief, used for its intended purpose.

142. ALLEN YOUNG was a consumer who was in the foreseeable vicinity of use and danger associated with the intended purpose of the Nyberg Vehicle as designed and manufactured.

143. As a direct and proximate result of this defective product and defective design by Defendant, GENERAL MOTORS CORPORATION, ALLEN YOUNG suffered traumatic bodily injury. As a direct and proximate result of this traumatic bodily injury, ALLEN YOUNG died.

144. As a direct and proximate result of the negligence of Defendant GENERAL MOTORS CORPORATION, ALLEN YOUNG's survivors and beneficiaries suffered the following damages, which are compensable under Florida's Wrongful Death Statute, §768.21:

- a. Loss of support and services from the date of injury to the date of death, with interest, and future loss of support and services from the date of death;
- b. Loss of parental companionship, instruction, and guidance and damages for mental pain and suffering;
- c. Loss of earnings from the date of injury to the date of death, with interest, and loss of the prospective net accumulations of Allen Young, reduced to present value;
- d. Medical and funeral expenses that have or may become charged against the Estate or that were paid by or on behalf of Allen Young due to his death; and
- e. All other compensable damages pursuant to Section 768.21, Florida Statutes.

WHEREFORE, Plaintiff, TIMOTHY YOUNG, as Personal Representative of the Estate of Allen Young, deceased, demands judgment in excess of \$15,000.00 for damages against Defendant, GENERAL MOTORS CORPORATION, plus attorney's fees where applicable, costs, and interest on that portion of the claim constituting liquidated damages and trial by jury.

COUNT XII
STRICT LIABILITY- MANUFACTURING DEFECT
AGAINST GENERAL MOTORS CORPORATION

145. Plaintiff realleges and incorporates by reference paragraphs 1 through 40 above.

146. At all times relevant hereto, GENERAL MOTORS CORPORATION was the manufacturer, designer, distributor, seller and/or supplier of the Nyberg Vehicle and placed this product into the stream of commerce in a defective and unreasonably dangerous condition such that the foreseeable risks exceeded the benefits associated with the design or formulation.

147. The Nyberg Vehicle was intended for use by consumers as a vehicle to be used on public roadways, and GENERAL MOTORS CORPORATION expected the Nyberg Vehicle to reach, and it did reach, consumers in the State of Florida, including ROGER NYBERG and ALLEN YOUNG, upon information and belief, without substantial change in the condition in which it was sold and without being materially altered or modified prior to implantation.

148. Upon information and belief, and according to allegations by ROGER NYBERG, the accelerator of the Nyberg Vehicle stuck, causing ROGER NYBERG to lose control of the Nyberg Vehicle and to crash into the Young Vehicle.

149. Upon information and belief, the Nyberg Vehicle was defective and unreasonably dangerous in its manufacture and construction in that, when it left the hands of GENERAL MOTORS CORPORATION, it deviated from product specifications and/or applicable federal requirements for automobiles, posing a serious risk of injury to consumers.

150. ROGER NYBERG was a foreseeable and expected user of the Nyberg Vehicle, and the Nyberg Vehicle was, upon information and belief, used for its intended purpose.

151. ALLEN YOUNG was a consumer who was in the foreseeable vicinity of use and danger associated with the intended purpose of the Nyberg Vehicle as designed and manufactured.

152. As a direct and proximate result of this defective product and GENERAL MOTORS CORPORATION'S defective manufacturing, ALLEN YOUNG suffered traumatic bodily injury. As a direct and proximate result of this traumatic bodily injury, ALLEN YOUNG died.

153. As a direct and proximate result of the negligence of Defendant GENERAL MOTORS CORPORATION, ALLEN YOUNG's survivors and beneficiaries suffered the following damages, which are compensable under Florida's Wrongful Death Statute, §768.21:

- a. Loss of support and services from the date of injury to the date of death, with interest, and future loss of support and services from the date of death;
- b. Loss of parental companionship, instruction, and guidance and damages for mental pain and suffering;
- c. Loss of earnings from the date of injury to the date of death, with interest, and loss of the prospective net accumulations of Allen Young, reduced to present value;
- d. Medical and funeral expenses that have or may become charged against the Estate or that were paid by or on behalf of Allen Young due to his death; and
- e. All other compensable damages pursuant to Section 768.21, Florida Statutes.

WHEREFORE, Plaintiff, TIMOTHY YOUNG, as Personal Representative of the Estate of Allen Young, deceased, demands judgment in excess of \$15,000.00 for damages against Defendant, GENERAL MOTORS CORPORATION, plus attorney's fees where applicable, costs, and interest on that portion of the claim constituting liquidated damages and trial by jury.

COUNT XIII
NEGLIGENCE OF GENERAL MOTORS CORPORATION

154. Plaintiff realleges and incorporates by reference paragraphs 1 through 40 above.

155. At all times relevant hereto, GENERAL MOTORS CORPORATION was the manufacturer, designer, distributor, seller and/or supplier of automobiles, including the Nyberg Vehicle.

156. At all times relevant hereto, GENERAL MOTORS CORPORATION owed a duty to the public and to ALLEN YOUNG to exercise reasonable care in the design, manufacture, testing, processing, advertising, marketing, testing, labeling, assembling, packaging, distribution, promotion and sale of automobiles, including the Nyberg Vehicle.

157. Upon information and belief, GENERAL MOTORS CORPORATION knew or should have known that the Nyberg Vehicle caused unreasonably dangerous risks of which ALLEN YOUNG was not aware.

158. Upon information and belief, GENERAL MOTORS CORPORATION negligently breached its duties to ALLEN YOUNG because it:

- a) Designed, manufactured and sold automobiles, including the Nyberg Vehicle, that it knew or should have known created an unreasonably high risk of failure; and
- b) Designed, manufactured, labeled and distributed an unsafe product.

159. As a direct and proximate result of GENERAL MOTOR CORPORATION'S negligent acts and omissions, upon information and belief, ROGER NYBERG'S accelerator stuck and as a direct and proximate result, ALLEN YOUNG suffered traumatic bodily injury. As a direct and proximate result of this traumatic bodily injury, ALLEN YOUNG died.

160. As a direct and proximate result of the negligence of Defendant GENERAL MOTORS CORPORATION, ALLEN YOUNG'S survivors and beneficiaries suffered the following damages, which are compensable under Florida's Wrongful Death Statute, §768.21:

- a. Loss of support and services from the date of injury to the date of death, with interest, and future loss of support and services from the date of death;

- b. Loss of parental companionship, instruction, and guidance and damages for mental pain and suffering;
- c. Loss of earnings from the date of injury to the date of death, with interest, and loss of the prospective net accumulations of Allen Young, reduced to present value;
- d. Medical and funeral expenses that have or may become charged against the Estate or that were paid by or on behalf of Allen Young due to his death; and
- e. All other compensable damages pursuant to Section 768.21, Florida Statutes.

WHEREFORE, Plaintiff, TIMOTHY YOUNG, as Personal Representative of the Estate of Allen Young, deceased, demands judgment in excess of \$15,000.00 for damages against Defendant, GENERAL MOTORS CORPORATION, plus attorney's fees where applicable, costs, and interest on that portion of the claim constituting liquidated damages and trial by jury.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and U.S. Mail to **T.R. Unice, Jr.**, Zimmet, Unice & Salzman, P.A., 2570 Coral Landings Boulevard, Suite 201, Palm Harbor Florida 34684, **Michael Kraft**, Conroy Simberg Gannon Krevans & Abel, P.A., 201 East Kennedy Boulevard, Suite 900, Tampa Florida 33602, **Rosemary Eure**, Lancaster & Eure, P.A., Post Office Drawer 4257, Sarasota Florida 34230, **Michael E. Reed**, **Brian P. Haskell**, and **Meghan L. DeWitt**, Wicker, Smith, O'Hara, McCoy & Ford, P.A., 100 North Tampa St., Ste. 1800, Tampa, Florida 33602, **Bennett C. Lofaro** and **Thomas F. Brink**, Litchfield Cavo LLP, 5201 W. Kennedy Boulevard, Suite 450, Tampa, FL 33609, **Sara Klco**, Rumberger Kirk & Caldwell, 100 North Tampa Street, Suite 2000, Tampa, Florida 33602, **Kent B. Hanson**, Hanson Bolkcom Law Group, Ltd., 527 Marquette Avenue, Suite 2300, Minneapolis,

Minnesota 55402, **Cheryl Kempf**, Florida Power & Light Company, 700 Universe Blvd, Juno Beach, FL 33408, and **Jeffrey M. Katz** and **Michael D. Siegel**, Dalan, Katz & Siegel, P.L., 2633 McCormick Drive, Suite 101, Clearwater, FL 33759 on this ____ day of April, 2012.

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