

STATE OF INDIANA	)	IN THE MARION CIRCUIT/SUPERIOR COURT
	)	SS:
COUNTY OF MARION	)	CAUSE NO.:
 CODY B. BYRNS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
SCHWAN’S CONSUMER BRANDS,	)	
INC., and SCHWAN’S CONSUMER	)	
BRANDS NORTH AMERICA, INC.,	)	
and STEVEN R. AULICH,	)	
	)	
Defendants.	)	

**COMPLAINT FOR DAMAGES**

Comes now the Plaintiff, Cody B. Byrns, by counsel, and for his complaint for damages against Defendants, Schwan’s Consumer Brands, Inc., Schwan’s Consumer Brands North America, Inc., and Steven R. Aulich, alleges and states as follows:

1. Plaintiff, Cody B. Byrns, is a resident of Princeton, Gibson County, Indiana.

2. Defendant, Schwan’s Consumer Brands, Inc., is a Minnesota corporation authorized to do business in the State of Indiana with its registered agent located in Indianapolis, Marion County, Indiana.

3. All acts and omissions of Defendant, Schwan’s Consumer Brands, Inc., herein alleged were performed or omitted by employees, agents, and/or representatives of Schwan’s Consumer Brands, Inc. while they were acting within the scope and course of their employment with Schwan’s Consumer Brands, Inc.

4. Defendant, Schwan's Consumer Brands North America, Inc., is a Minnesota corporation authorized to do business in the State of Indiana with its registered agent located in Indianapolis, Marion County, Indiana.

5. All acts and omissions of Defendant, Schwan's Consumer Brands North America, Inc., herein alleged were performed or omitted by employees, agents, and/or representatives of Schwan's Consumer Brands North America, Inc. while they were acting within the scope and course of their employment with Schwan's Consumer Brands North America, Inc.

6. Defendant, Steven R. Aulich, is a resident of Newburgh, Warrick County, Indiana.

7. Jurisdiction is proper in Marion County pursuant to Ind. Code §§ 33-28-1-2 and 33-29-1.5-2, and Marion County is a county of preferred venue pursuant to Ind. Trial Rule 75(A)(4). See also *American Family Insurance Company v. Ford Motor Company*, 857 N.E.2d 971, 975 (Ind. 2006).

8. At all times relevant herein, there existed in Gibson County, Indiana, a public highway known as US-41 which runs generally in a northerly and southerly direction and intersects with County Road 100 North which runs generally in an easterly and westerly direction.

9. On May 31, 2013, at approximately 12:45 p.m., Plaintiff, Cody B. Byrns, was stopped in traffic at a red light on southbound US-41 where it intersects with County Road 100 North.

10. At the same time and place, Defendant Steven R. Aulich, was driving a 2013 International 4300 straight truck southbound on US-41 towards the intersection with County Road 100 North.

11. As Defendant Steven R Aulrich approached the intersection, he carelessly and negligently failed to slow or stop the truck he was operating and crashed into the rear of Plaintiff Cody B. Byrns' vehicle.

12. Plaintiff, Cody B. Byrns' vehicle was pushed into the vehicle directly in front of him and through the intersection before bursting into flames with Cody trapped inside the vehicle.

13. Upon information and belief, the truck driven by Defendant Steven R. Aulrich was owned by Defendant Schwan's Consumer Brands, Inc.

14. At the time of the collision, Defendant Steven R. Aulrich was operating the truck in the scope and course of his employment and/or with the express permission of Defendant Schwan's Consumer Brands, Inc., which is vicariously liable for the negligence of Mr. Aulrich.

15. Upon information and belief, the truck driven by Defendant Steven R. Aulrich was owned by Defendant Schwan's Consumer Brands North America, Inc.

16. At the time of the collision, Defendant Steven R. Aulrich was operating the truck in the scope and course of his employment and/or with the express permission of Defendant Schwan's Consumer Brands North America, Inc., which is vicariously liable for the negligence of Mr. Aulrich.

17. Defendant Steven R. Aulrich and Defendants, Schwan's Consumer Brands, Inc., Schwan's Consumer Brands North America, Inc., by and through their agent, representative and/or employee, Defendant Steven R. Aulrich, were careless and negligent in one or more of the following ways:

- a. Steven R. Aulrich careless and negligently failed to use the care an ordinarily careful person would use under the same or similar circumstances;

- b. Steven R. Aulrich carelessly and negligently failed to keep his vehicle under proper control so as to avoid striking Cody B. Byrns' vehicle;
- c. Steven R. Aulrich carelessly and negligently failed to maintain a proper lookout for other vehicles using the roadway, including the vehicle operated by Cody B. Byrns;
- d. Steven R. Aulrich carelessly and negligently failed to apply the brakes of his vehicle in time to avoid a collision with Cody B. Byrns' vehicle;
- e. Steven R. Aulrich failed to change, alter or divert the course of his vehicle to avoid a collision with the vehicle being operated by Cody B. Byrns;
- f. Steven R. Aulrich carelessly and negligently failed to properly stop at the red light controlling southbound traffic on U.S. 41 at its intersection with County Road 100 North in violation of Ind. Code § 9-21-3-7(b)(3);
- g. Steven R. Aulrich carelessly and negligently disregarded a signal and/or regulatory sign;
- h. Steven R. Aulrich carelessly and negligently operated his vehicle at a dangerous and excessive rate of speed under the circumstances; and
- i. Steven R. Aulrich operated a commercial vehicle in violation state and federal statutes and regulations, including, but not limited to, Ind. Code § 8-2.1-24-18 and the Federal Motor Carrier Safety Regulations, 49 C.F.R. §§ 40, 350-399.

18. Additionally, Defendants, Schwan's Consumer Brands, Inc. and Schwan's Consumer Brands North America, Inc., were careless and negligent in one or more of the following ways:

- a. Schwan's Consumer Brands, Inc. and Schwan's Consumer Brands North America, Inc. negligently and carelessly failed to properly hire, select, train, supervise, and/or retain its drivers, including, but not limited to, Steven R. Aulrich;
- b. Schwan's Consumer Brands, Inc. and Schwan's Consumer Brands North America, Inc. negligently and carelessly put or allowed to remain on the road unqualified and/or reckless drivers, including, but not limited to, Steven R. Aulrich;
- c. Schwan's Consumer Brands, Inc. and Schwan's Consumer Brands North America, Inc., negligently and carelessly failed to screen and test its drivers periodically to monitor and evaluate their safety orientation, including, but not limited to, Steven R. Aulrich;
- d. Schwan's Consumer Brands, Inc. and Schwan's Consumer Brands North America, Inc., negligently and carelessly failed to develop, promulgate, adopt, and/or implement safety policies, procedures, and practices for its drivers, including, but not limited to, Steven R. Aulrich;
- e. Schwan's Consumer Brands, Inc. and Schwan's Consumer Brands North America, Inc., negligently and carelessly permitted, allowed, and/or failed to stop its drivers, including, but not limited to, Steven R. Aulrich, from violating state and federal statutes and regulations, including, but not limited to, Ind. Code § 8-2.1-24-18 and the Federal Motor Carrier Safety Regulations, 49 C.F.R. §§ 40, 350-399;

- f. Schwan's Consumer Brands, Inc. and Schwan's Consumer Brands North America, Inc., negligently and carelessly failed to provide periodic systematic safety and/or defensive driving training for its drivers, including, but not limited to, Steven R. Aulrich;
- g. Schwan's Consumer Brands, Inc. and Schwan's Consumer Brands North America, Inc., negligently and carelessly failed to provide remedial training of its drivers, including, but not limited to, Defendant, Steven R. Aulrich; and
- h. Schwan's Consumer Brands, Inc. and Schwan's Consumer Brands North America, Inc., negligently entrusted its vehicle to Steven R. Aulrich.

19. As a direct and proximate result of the negligence of the Defendants, Steven R. Aulrich, Schwan's Consumer Brands, Inc., and Schwan's Consumer Brands North America, Inc., the Plaintiff, Cody R. Byrns, has sustained severe burns and other personal injuries affecting his ability to function as a whole person and resulting in permanent disfigurement.

20. As a direct and proximate result of his injuries and the effects upon him, the Plaintiff, Cody B. Byrns, has experienced, and will experience in the future, physical pain and mental suffering.

21. As a direct and proximate result of his injuries and the effects upon him, the Plaintiff, Cody B. Byrns, in order to attempt to treat his injuries and lessen his physical pain, has been required to engage the services of medical providers for medical treatment, and has incurred reasonable medical expenses as a result.

22. As a direct and proximate result of his injuries and the effects upon him, the Plaintiff Cody B. Byrns will require additional medical care and will incur additional medical expenses in the future.

23. As a direct and proximate result of his injuries and the effects upon him, the Plaintiff, Cody B. Byrns, has a decreased life expectancy.

24. At the time of this collision, the Plaintiff, Cody B. Byrns, was gainfully employed and as a direct and proximate result of his injuries, has been forced to miss work and will miss additional work in the future, thereby incurring a loss of wages.

25. As a direct and proximate result of the negligence of the Defendants, the activities of Plaintiff, Cody B. Byrns' daily life have been permanently and adversely affected to his detriment.

26. As a direct and proximate result of his injuries and the effects upon him, the Plaintiff, Cody B. Byrns, has suffered a loss or impairment of earning capacity.

WHEREFORE, Plaintiff, Cody B. Byrns, prays for judgment against the Defendants, Steven R. Aulich, Schwan's Consumer Brands, Inc. and Schwan's Consumer Brands North America, Inc., in an amount commensurate with his injuries, for the costs of this action, and for all other just and proper relief.

Respectfully submitted,

**CLINE FARRELL CHRISTIE & LEE, P.C.**

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By: \_\_\_\_\_  
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