

**IN THE CIRCUIT COURT OF SHANNON COUNTY, MISSOURI**

**KENZY J. GASTON,** )  
278 5th Street )  
Summersville, MO 65571 )

and )

**KEAGAN R. GASTON,** a minor, )  
by his Next Friend, **KENZY J. GASTON,** )

and )

**KENNY GASTON** )  
11916 Highway 137 )  
Licking, MO 65542 )

and )

**MARY GASTON** )  
21275 Hunter Drive )  
Summersville, MO 65571 )

**Plaintiffs,** )

vs. )

**UNIFIRST CORPORATION, and** )  
**Serve: Registered Agent** )  
**CSC - Lawyers Incorporating** )  
**Service Company** )  
**221 Bolivar Street** )  
**Jefferson City, MO 65101** )

**ANDREW J. SWOPE,** )  
**Serve: Andrew J. Swope** )  
**992 Crestwick** )  
**Nixa, MO 65714** )

**Defendants.** )

**Case No.** \_\_\_\_\_

**PETITION FOR DAMAGES**

Plaintiffs, through counsel, and for their causes of action against defendants Unifirst Corporation and Andrew J. Swope as a result of injuries suffered, hereby state and allege as follows:

**PARTIES**

**PLAINTIFFS**

1. Plaintiff Kenzy J. Gaston is an individual over the age of 18 residing at 278 5th Street, Summersville, MO 65571. Kenzy Gaston is the surviving spouse of decedent Brock R. Gaston who died in a motor vehicular collision on May 3, 2010. Therefore, plaintiff Kenzy Gaston is a proper person to bring this lawsuit.

2. Plaintiff Keagan R. Gaston is a minor under the age of 18 and is a resident of Summersville, Shannon County, Missouri. At all times herein mentioned Keagan Gaston was the natural child of decedent Brock R. Gaston who died in a motor vehicular collision on May 3, 2010. Kenzy Gaston is the natural mother of Plaintiff Keagan Gaston and has been appointed Next Friend of her son Keagan Gaston for purposes of pursuing his actions for wrongful death.

3. Plaintiff Kenny Gaston is an individual over the age of 18 residing at 11916 Highway 137, Licking, MO 65542. Kenny Gaston is the surviving father of decedent Brock R. Gaston who died in a motor vehicular collision on May 3, 2010. Therefore, plaintiff Kenny Gaston is a proper person to bring this lawsuit.

4. Plaintiff Mary Gaston is an individual over the age of 18 residing at 21275 Hunter Drive, Summersville, MO 65571. Mary Gaston is the surviving mother of decedent Brock R. Gaston who died in a motor vehicular collision on May 3, 2010. Therefore, plaintiff Mary Gaston is a proper person to bring this lawsuit.

## **DEFENDANTS**

5. Defendant Unifirst Corporation (hereinafter “Unifirst”) is a Missouri Corporation. Service may be had by serving its registered agent, CSC - Lawyers Incorporating Service Company, 221 Bolivar Street, Jefferson City, MO 65101. At all times relevant hereto, defendant Unifirst operated as a commercial motor carrier in the state of Missouri.

6. Defendant Andrew J. Swope is an individual over the age of 18 residing at 992 Crestwick, Nixa, MO 65714. At all times relevant hereto, defendant Swope was an employee of defendant Unifirst, operating the Unifirst box truck.

## **JURISDICTION AND VENUE**

7. Jurisdiction is proper in this Court as defendants are residents of the state of Missouri, plaintiffs are residents of the state of Missouri, and the cause of action accrued in the state of Missouri.

8. Venue is proper in this Court pursuant R.S.Mo. § 508.010(4) because the Plaintiff was first injured in Shannon County, Missouri.

## **FACTS COMMON TO ALL COUNTS**

9. Missouri Highway 106 (hereinafter “MO-106”) is a public roadway generally running east and west at the relevant location.

10. On or about May 3, 2010, at approximately 3:15 p.m., defendant Swope was operating a 2009 Morgan Olson box truck, owned by and/or operated under the authority of defendant Unifirst, westbound on MO-106 in Shannon County, Missouri, near Summersville, Missouri.

11. At said time and place, decedent Brock Gaston was operating a Massey Ferguson tractor westbound on MO-106 in front of defendant Swope. Brock Gaston was pulling a large piece of farm equipment, a spreader, with the tractor.

12. At said time and place, Brock Gaston was operating his vehicle in compliance with R.S.Mo. § 307.127 and displayed a slow moving vehicle sign (an orange triangle) on the rear of his vehicle.

13. At said time and place, Brock Gaston was operating his vehicle as far right as safely possible for the roadway conditions and/or circumstances.

14. As defendant Swope approached the vehicle operated by Brock Gaston, he failed to slow the Unifirst box truck or make an avoidance maneuver.

15. As a result, defendant Swope violently struck the back of the spreader, which was attached to the tractor operated by Brock Gaston.

16. The unit operated by Brock Gaston skidded counterclockwise and the spreader separated from the tractor.

17. As a result of the collision with the Unifirst box truck, the tractor overturned and ejected Brock Gaston.

18. Defendant Swope lost complete control of the Unifirst box truck as it left the roadway to the south (left) and came to rest.

19. As a result of the collision with the Unifirst box truck, Brock Gaston suffered severe injuries and died at the scene of the incident.

**COUNT I**  
**Plaintiffs v. Unifirst**  
**(Negligence)**

Plaintiffs, for Count I of their cause of action against Defendant Unifirst Corporation

allege and state as follows:

20. Plaintiffs hereby incorporate by reference, as though fully set forth herein, paragraphs 1 through 19 above.

21. At the time of the relevant events, defendant Swope was an employee or agent of defendant Unifirst and was operating defendant Unifirst's box truck within the course and scope of his employment and/or with express permission of defendant Unifirst. Therefore, defendant Unifirst is vicariously liable for the negligence of its employee, defendant Swope.

22. On May 3, 2010, while utilizing the public roadway of MO-106, defendant Unifirst, through its employee or agent Swope, owed decedent Brock Gaston and plaintiffs a duty to operate defendant Unifirst's box truck under control with the highest degree of care as not to injure, maim, or harm Brock Gaston.

23. Defendant Unifirst, by and through defendant Swope, breached the above-defined duty by operating the Unifirst box truck in a careless and negligent manner in at least the following respects:

- a. Driving at an excessive speed for the roadway conditions and/or circumstances;
- b. Failing to reduce speed when the box truck approached the slow moving vehicle operated by Brock Gaston;
- c. Failing to apply the box truck's brakes before striking the vehicle operated by Brock Gaston;
- d. Permitting the box truck to collide with another vehicle on the roadway;
- e. Failing to sound a horn or give warning at any time prior to or during the collision;
- f. Failing to keep a proper lookout;
- g. Failing to maintain a safe distance behind other vehicles;

- h. Failing to keep the box truck in the appropriate lane of travel and permitting the box truck to cross the eastbound lane of MO-106;
- i. Violating the Federal Motor Carrier Safety Regulations including, but not limited to:
  - 1. 49 CFR 392.3, which states in part:

No driver shall operate a commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a commercial motor vehicle, while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle.
  - 2. 49 CFR 391.11 which states:
    - (a) A person shall not drive a commercial motor vehicle unless he/she is qualified to drive a commercial motor vehicle. Except as provided in §391.63, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless that person is qualified to drive a commercial motor vehicle.
- k. Failing to have the appropriate medical fitness/wellness to operate a commercial vehicle.

24. As a direct and proximate result of defendant Unifirst's negligence, the Gaston vehicle was struck by the Unifirst box truck.

25. As a direct and proximate result of defendant Unifirst's negligence, Brock Gaston suffered severe injuries and death.

26. As a direct and proximate result of defendant Unifirst's negligence, Plaintiffs suffered damages including, but not limited to, pecuniary losses suffered by reason of Brock Gaston's death, funeral expenses, and lost income and support from Brock Gaston.

27. Due to Brock Gaston's untimely death, Plaintiffs have been, and in the future will be, deprived of his consortium, services, maintenance, companionship, comfort, instruction, guidance, counsel training and support.

WHEREFORE, Plaintiffs respectfully requests judgment against defendant Unifirst Corporation for such damages as are fair and reasonable together with her costs and fees, and for such other and further relief as the Court deems just and proper under the circumstances.

**COUNT II**  
**Plaintiff v. Andrew Swope**  
**(Negligence)**

Plaintiffs, for Count II of their cause of action against Defendant Andrew Swope, allege and state as follows:

28. Plaintiffs hereby incorporate by reference, as though fully set forth herein, paragraphs 1 through 27 above.

29. On May 3, 2010, while utilizing the public roadway of MO-106, defendant Swope owed decedent Brock Gaston and plaintiffs a duty to operate defendant Unifirst's box truck under control with the highest degree of care as not to injure, maim, or harm Brock Gaston.

30. Defendant Swope breached the above-defined duty by operating the Unifirst box truck in a careless and negligent manner in at least the following respects:

- a. Driving at an excessive speed for the roadway conditions and/or circumstances;
- b. Failing to reduce speed when the box truck approached the slow moving vehicle operated by Brock Gaston;
- c. Failing to apply the box truck's brakes before striking the vehicle operated by Brock Gaston;
- d. Permitting the box truck to collide with another vehicle on the roadway;
- e. Failing to sound a horn or give warning at any time prior to or during the collision;
- f. Failing to keep a proper lookout;
- g. Failing to maintain a safe distance behind other vehicles;

- h. Failing to keep the box truck in the appropriate lane of travel and permitting the box truck to cross the eastbound lane of MO-106;
- i. Violating the Federal Motor Carrier Safety Regulations including, but not limited to:

- 1. 49 CFR 392.3, which states in part:

No driver shall operate a commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a commercial motor vehicle, while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle.

- 2. 49 CFR 391.11 which states:

(a) A person shall not drive a commercial motor vehicle unless he/she is qualified to drive a commercial motor vehicle. Except as provided in §391.63, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless that person is qualified to drive a commercial motor vehicle.

- k. Failing to have the appropriate medical fitness/wellness to operate a commercial vehicle.

31. As a direct and proximate result of defendant Swope's negligence, the Gaston vehicle was struck by the Unifirst box truck.

32. As a direct and proximate result of defendant Swope's negligence, Brock Gaston suffered severe injuries and death.

33. As a direct and proximate result of defendant Swope's negligence, Plaintiffs suffered damages including, but not limited to, pecuniary losses suffered by reason of Brock Gaston's death, funeral expenses, and lost income and support from Brock Gaston.

34. Due to Brock Gaston's untimely death, Plaintiffs have been, and in the future will be, deprived of his consortium, services, maintenance, companionship, comfort, instruction, guidance, counsel training and support.



WHEREFORE, Plaintiffs respectfully requests judgment against defendant Andrew Swope for such damages as are fair and reasonable together with their costs and fees, and for such other and further relief as the Court deems just and proper under the circumstances.

**COUNT III**  
**Plaintiffs vs. Unifirst Corporation and Andrew Swope**  
**(Punitive Damages)**

Plaintiffs, for Count III of their cause of action against defendants Unifirst Corporation and Jose Swope, allege and state as follows:

35. Plaintiff hereby incorporates by reference, as though fully set forth herein, paragraphs 1 through 34 above.

36. On May 3, 2010, while utilizing the public roadway of MO-106 either directly or through its agent/driver, the defendants consciously disregarded the safety of other motorists, including Brock Gaston, by approaching a slow moving vehicle at an excessive speed for the circumstances and failing to slow the Unifirst box truck or make an avoidance maneuver.

37. Defendants were aware of Federal Motor Carrier Safety Regulations and Missouri traffic laws requiring that they significantly reduce the speed of a commercial vehicle under such circumstances and avoid collisions with other vehicles on the roadway. Despite these federal and state mandates, defendants continued to proceed at an unreasonable rate of speed and failed to keep a proper lookout near a slow moving vehicle.

38. Despite driver distraction rendering the operation of the commercial vehicle extremely dangerous, Defendants willfully chose to continue driving at a high rate of speed near a slow moving vehicle.

39. As a direct and proximate result of the unsafe operation of the box truck and the conscious disregard of the slow moving vehicle on the roadway and safety regulations,

defendants caused a collision with the vehicle driven by Brock Gaston resulting in severe injuries and death to Brock Gaston.

WHEREFORE, having stated the above reasons, Plaintiffs respectfully request that punitive damages be assessed against the defendants for the wrongful death of Brock Gaston and for damages for the aggravating circumstances of decedent Brock Gaston's death in an amount that is fair and reasonable to compensate the Plaintiffs and to deter future, similar wrongdoing by defendants.

**COUNT IV**  
**Plaintiffs vs. Unifirst Corporation**  
**(Negligent Hiring, Supervision, and Retention)**

Plaintiffs, for Count IV of their cause of action against Unifirst Corporation state and allege as follows:

40. Plaintiff hereby incorporates by reference, as though fully set forth herein, paragraphs 1 through 39 above.

41. Defendant Unifirst owed a duty of reasonable care to the decedent Brock Gaston and Plaintiffs in the hiring, training, supervision, and retention of defendant Swope.

42. Defendant Unifirst was negligent in the hiring, training, supervision, and retention of defendant Swope based upon his inability to reasonably and safely operate a box truck as specifically set forth in Counts I and II.

43. Defendant Unifirst's failure to reasonably hire, train, supervise, and retain defendant Swope directly caused or contributed to cause the accident and serious injuries and death to Brock Gaston. Had defendant Unifirst used the care and skill exercised by a reasonable trucking company under the same or similar circumstances, Andrew Swope would not have been

hired, would have been better trained, would have been better supervised and/or would not have been retained, any of which would have prevented the subject collision.

44. As a direct and proximate result of defendant Unifirst's negligence, Brock Gaston suffered severe injuries and death.

45. As a direct and proximate result of defendant Unifirst's negligence, Plaintiffs suffered damages including, but not limited to, pecuniary losses suffered by reason of Brock Gaston's death, funeral expenses, and lost income and support from Brock Gaston.

46. Due to Brock Gaston's untimely death, Plaintiffs have been, and in the future will be, deprived of his consortium, services, maintenance, companionship, comfort, instruction, guidance, counsel training and support.

WHEREFORE, Plaintiff Brock Gaston respectfully requests judgment against defendant Unifirst Corporation for such damages as are fair and reasonable together with their costs and fees, and for such other and further relief as the Court deems just and proper under the circumstances.

**Respectfully submitted,**

**BARTIMUS, FRICKLETON, ROBERTSON & GORNY, P.C.**

**BY:**

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