

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION**

Patrick C. Pennington

and

Tammy Pennington

Plaintiffs,

vs.

Con Way Truckload Inc.

and

Moore S. Sanchez Jr.

Defendants.

* Case No.: 11-394
*
* Honorable:
*
* **COMPLAINT WITH DEMAND FOR**
* **JURY TRIAL**
*
*
*
*
*
*
*
*
*
*
*
*
*
*

Preliminary Statement

1. This is a clear liability collision in which Defendant’s tractor-trailer made a u-turn in front of plaintiff’s car which then struck the defendant’s trailer broadside, causing the plaintiff to sustain multiple injuries, including head, ear, brain, shoulder, elbow, wrist, leg and vertebral injuries.

Parties

2. Plaintiff Patrick C. Pennington is an adult individual who resides at 370 Sycamore St. in Pickerington, Ohio 43147.

3. Plaintiff Tammy Pennington is an adult individual and the spouse of Patrick Pennington and also resided with him at 370 Sycamore St. in Pickerington, Ohio 43147.
4. Defendant Con Way Truckload, Inc. is a corporation incorporated in Missouri with its headquarters and principle place of business in Joplin, Missouri. It maintains a statutory agent authorized to accept services of process in Ohio named United States Corporation Company with an address of 50 West Broad St., Suite 1800, Columbus, Ohio 43215.
5. Defendant Moore S. Sanchez, Jr. is an adult individual who resides at 1368 Willow Wind Dr., Clermont, Florida 34711. Moore S. Sanchez, Jr. is a citizen of the state of Florida. At all times relevant herein Moore S. Sanchez was acting in the course and scope of his employment with Con Way Truckload, Inc.

Jurisdiction

6. This diversity action is brought under 28 U.S.C. Section 1332. Plaintiffs, Patrick Pennington and Tammy Pennington are citizens of the State of Ohio and Defendant Moore S. Sanchez Jr. is a citizen of the State of Florida. Defendant Con Way Truckload Inc. is a corporation organized and existing under the laws of the State of Missouri with its principal place of business in Joplin, Missouri. The crash occurred in Berkshire Township, Delaware County Ohio. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.

First Cause of Action
Negligence of Truck Driver

7. On or about May 22, 2009, Plaintiff Patrick Pennington was driving westbound on the U.S. 36 near Fourwinds Dr. in Delaware County, Ohio. Defendant Moore S. Sanchez Jr. was also westbound and pulled off to the right side of the road. Defendant then made a u-turn in front of plaintiff who struck defendant's trailer broadside.
8. Defendant Moore S. Sanchez Jr. had a duty to operate his tractor-trailer in a safe and reasonable manner, to keep a proper look out, to maintain his lane of travel and to yield to Plaintiff.
9. Defendant Moore S. Sanchez Jr. failed in the above-mentioned duties and was therefore negligent.
10. Defendant Moore S. Sanchez Jr.'s negligence was the direct and proximate cause of Plaintiff Patrick Pennington's injuries, including but not limited to a brain and closed head injury, ear drum perforation, rotator cuff tear, fractured elbow, wrist sprain, a/c joint injury and labral tear injuries.
11. Plaintiff Patrick Pennington's injuries and damages are permanent.
12. As a direct and proximate result of Defendant Moore S. Sanchez Jr.'s negligence, Plaintiff Patrick Pennington has lost past and future wages and his earning capacity has been diminished.
13. Plaintiff Patrick Pennington has incurred medical bills for the treatment of his injuries directly resulting from this collision.

14. As a direct and proximate result of Defendant Moore S. Sanchez Jr.'s negligence, Plaintiff Patrick Pennington experienced physical and mental pain and suffering and has lost the ability to perform his usual activities, resulting in a diminished quality of life.

Second Cause of Action
Statutory Violations of Truck Driver

15. All allegations and causes of action above are incorporated into this cause of action by reference.

16. Defendant Moore S. Sanchez Jr. violated state and federal statutes and regulations, including but not limited to O.R.C. 4511.37 and 49 CFR §§350-399.

17. Defendant Moore S. Sanchez Jr.'s statutory violations directly and proximately caused Plaintiff's damages and injuries.

18. Defendant Moore S. Sanchez Jr. is negligent per se based on these statutory and regulatory violations.

Third Cause of Action
Claim for Punitive Damages against Truck Driver

19. All allegations and causes of action above are incorporated into this cause of action by reference.

20. Defendant Moore S. Sanchez Jr.'s actions demonstrate a conscious disregard for the rights and safety of Plaintiff Patrick Pennington and the rest of the public. Plaintiff demands punitive damages against Moore S. Sanchez Jr.

Fourth Cause of Action

Vicarious Liability of Con Way Truckload Inc.

21. All allegations and causes of action above are incorporated into this cause of action by reference.
22. Defendant Moore S. Sanchez Jr. was the employee, agent, servant, or independent contractor for Con Way Truckload Inc. Accordingly, Con Way Truckload Inc. is vicariously liable for the acts of Defendant Moore S. Sanchez Jr. for the causes of action above.

Fifth Cause of Action

Strict Liability of Con Way Truckload Inc.

23. All allegations and causes of action above are incorporated into this cause of action by reference.
24. Regardless of employment relationship, Con Way Truckload Inc. is the registered owner of the USDOT number 000702289 displayed on the tractor unit involved in this collision and is therefore responsible for the acts of the driver of that vehicle.

Sixth Cause of Action

Negligence of Con Way Truckload Inc.

25. All allegations and causes of action above are incorporated in this action by reference.
26. Defendant Con Way Truckload Inc. had a duty to act reasonably in hiring and retaining Moore S. Sanchez Jr. and to promulgate and enforce rules and regulations to ensure its drivers and vehicles were reasonably safe.

27. Defendant Con Way Truckload Inc. failed in the above-mentioned duties and was therefore negligent.
28. Defendant Con Way Truckload Inc.'s negligence was the direct and proximate cause of Plaintiff Patrick Pennington's injuries, including but not limited to a closed head injury ear drum perforation, rotator cuff tear, fractured elbow, wrist sprain, a/c joint injury and labral tear injuries.

Seventh Cause of Action
Statutory Violations of Con Way Truckload Inc.

29. All allegations and causes of action above are incorporated into this cause of action by reference.
30. Defendant Con Way Truckload Inc. violated – and encouraged Defendant Moore S. Sanchez Jr. to violate state and federal statutes and regulations, including but not limited to O.R.C. 4511.37 and 49 CFR §§350-399.
31. Defendant Con Way Truckload Inc.'s statutory violations directly and proximately caused plaintiff's damages and injuries.
32. Defendant Con Way Truckload Inc is negligent per se based on these statutory and regulatory violations.

Eighth Cause of Action
Claim for Punitive Damages against Con Way Truckload Inc.

33. All allegations and causes of action above are incorporated into this cause if action by reference.

34. Defendant Con Way Truckload Inc.'s actions demonstrate a conscious disregard for the rights and safety of Plaintiff Patrick Pennington and the rest of the public. Plaintiff demands punitive damages against Con Way Truckload Inc.

Ninth Cause of Action
Consortium Claim

35. All allegations and causes of action above are incorporated into this cause of action by reference.

36. Plaintiff Patrick Pennington and Tammy Pennington were married at the time of the collision and remain married.

37. As a direct and proximate result of Defendants' negligence and statutory violations, Tammy Pennington has lost the companionship, society, services, and consortium of Plaintiff Patrick Pennington.

WHEREFORE Plaintiffs demand judgment against Defendants in an amount in excess of \$75,000 for all causes of action above; plus punitive damages against the truck driver and the truck company; and other relief as justice requires or as this Court or the trier of fact sees fit under principles of law and equity; plus interest and costs.

Respectfully submitted,

s/ Michael Jay Leizerman

Michael Jay Leizerman (0063945)

Ronald F Leonhardt (0059069)

Rena M. Samole (0087151)

E.J Leizerman & Associates, LLC

717 Madison Avenue

Toledo, Ohio 43624

Telephone: (419) 243-1010

Email: michael@leizerman.com

ron@leizerman.com

rena@leizerman.com

and

Scott E. Smith (003749)

Scott Elliot Smith, L.P.A.

5003 Horizons Drive, Suite 200

Columbus, OH 43220

Telephone: (614) 846-1700

Attorneys for Plaintiffs