

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

1. **The Estate of Michael** : Case no.
Cummisky, by MidFirst Trust
Company, Special Administrator, : Honorable

Plaintiff, :

-vs.- : **Complaint with Jury Demand**

1. **Estes Express Lines** *and* :

2. **Eddie Neal Wyatt** :

Defendants. :

The Estate of Michael Cummisky, by MidFirst Trust Company, Special Administrator, files this complaint.

OVERVIEW

1. In September of 2010, an Estes Express Lines triple trailer drove off the side of the road and crashed into and killed Michael Cummisky, a 24 year old ex-U.S. Marine. He died several hours after being struck. He leaves behind a wife, a 2 year old daughter and a 6 month old son.

PARTIES

Plaintiff

2. The Probate Court in Tulsa, the county that Michael Cummisky resided in at the time of his death, has appointed MidFirst Trust Company as the Special Administrator of the Estate of Michael Cummisky. Michael Cummisky was a citizen of the state of Oklahoma.

3. Michael Cummisky is survived by his wife, Jennifer Lynne, and two children: KMC, age 2 at the time of filing this complaint and CMC, who is an infant.

Defendants

4. Defendant Estes Express Lines is a corporation incorporated in Virginia, with its headquarters and principal place of business in Richmond, Virginia. Estes Express Lines is a citizen of the Commonwealth of Virginia.

5. Defendant Eddie Neal Wyatt (“Eddie Neal Wyatt” or the “defendant driver”) is an adult individual who resides at 1616 Lee Street in Kaufman, TX 75142. Eddie Neal Wyatt is a citizen of the State of Texas.

STATEMENT OF JURISDICTION

6. This case is brought under 28 U.S.C. §1332(a)(1), based upon diversity of citizenship. Because Plaintiff is a citizen of Oklahoma, Defendants are all citizens of other states, and the amount in controversy

(exclusive of interest and costs) exceeds \$75,000, diversity jurisdiction exists in this Honorable Court.

BACKGROUND FACTS

7. On September 29, 2010, an Estes Express Lines triple tractor trailer on Interstate 35, just north of Perry, Oklahoma, drove off the right side of the road and struck a truck that was legally parked on the shoulder of the road and that was being towed.

8. Michael Cummisky is the tow truck driver who was standing on the shoulder of the road when he was struck and killed.

9. Eddie Neal Wyatt is the defendant employee of Estes Express Lines who drove the triple tractor trailer off the side of the road.

FIRST CAUSE OF ACTION

Wrongful Death

Defendant Eddie Neal Wyatt

10. Plaintiff incorporates all facts and allegations above into this cause of action by reference.

11. Eddie Neal Wyatt was negligent and reckless because he drove his tractor trailer off the road and otherwise breached his duty to drive the tractor trailer in a safe and reasonable manner under the circumstances.

12. As a direct and proximate result of Eddie Neal Wyatt's negligence and recklessness, Mr. Cummisky suffered fatal injuries.

13. As a direct and proximate result of Defendants' negligence and recklessness, Michael Cummisky's estate and surviving wife have incurred funeral, memorial and burial expenses. Surviving wife Jennifer and children KMC and CMC have experienced loss of consortium, grief, loss of companionship, mental pain, anguish and emotional trauma. Surviving wife and children have suffered pecuniary loss of Michael Cummisky's income, and services.

SECOND CAUSE OF ACTION
Wrongful Death Negligence *per se*
Defendant Eddie Neal Wyatt

14. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

15. Eddie Neal Wyatt violated numerous state and federal statutes and regulations including, but not limited to, 49 CFR §§350-399.

16. Eddie Neal Wyatt is negligent *per se* based on these statutory and regulatory violations.

17. Eddie Neal Wyatt's violations of state and federal statutes and regulations directly and proximately caused Michael Cummisky's death and other damages to him and his estate described in this complaint.

THIRD CAUSE OF ACTION

Survival Action

Defendant Eddie Neal Wyatt

18. Plaintiff incorporates all facts and allegations above into this cause of action by reference.

19. As a direct and proximate result of the negligence of Eddie Neal Wyatt, Michael Cummisky experienced pre-death terror and conscious suffering and pain after being involved in the crash and before his death.

FOURTH CAUSE OF ACTION

Vicarious Liability

Defendant Estes Express Lines

20. Plaintiff incorporates all allegations and causes of action above into this cause of action by reference.

21. At all relevant times, Eddie Neal Wyatt was agent, employee, servant, and/or independent contractor of the Defendant Estes Express Lines and was acting within the course and scope of his agency or employment, under the direct control of the Estes Express Lines. On this basis, Estes Express Lines is vicariously liable for Eddie Neal Wyatt's negligence.

22. Irrespective of the employment or agency relationship, Defendant Estes Express Lines is an interstate motor carrier responsible for the acts of the defendant driver.

FIFTH CAUSE OF ACTION
Wrongful Death
Defendant Estes Express Lines

23. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

24. Estes Express Lines had a duty to act reasonably in hiring, instructing, supervising and retaining Eddie Neal Wyatt, and to adopt and enforce policies, procedures, and rules to ensure that its drivers drove and acted safely, and its vehicles were operated and maintained safely.

25. Estes Express Lines breached these duties, and those breaches directly and proximately caused the damages described in this complaint.

SIXTH CAUSE OF ACTION
Negligence *per se*
Defendant Estes Express Lines

26. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

27. Estes Express Lines violated numerous state and federal statutes and regulations including, but not limited to 49 CFR §§ 350-399.

28. Estes Express Lines' violations of state and federal statutes and regulations directly and proximately caused Michael Cummisky's death and other damages to him and his estate described in this complaint.

29. Estes Express Lines is negligent *per se* based on these statutory and regulatory violations.

SEVENTH CAUSE OF ACTION

Survival Action

Defendant Estes Express Lines

30. Plaintiff incorporates all facts and allegations above into this cause of action by reference.

31. As a direct and proximate result of the negligence of Estes Express Lines, Michael Cummisky experienced pre-death terror and conscious suffering and pain after being involved in the crash and before his death.

32. Estes Express Lines is vicariously liable for the survival action brought against truck driver Eddie Neal Wyatt for his negligence.

EIGHTH CAUSE OF ACTION

Loss of Consortium

All Defendants

33. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

34. As a direct and proximate result of Defendants' negligence and recklessness, Michael Cummisky's estate and surviving wife have incurred funeral, memorial and burial expenses. Surviving wife Jennifer and children KMC and CMC have experienced loss of consortium, grief, loss of companionship, mental pain, anguish and emotional trauma. Surviving wife and children have suffered pecuniary loss of Michael Cummisky's income, and services.

NINTH CAUSE OF ACTION

Punitive Damages

All Defendants

35. Plaintiff incorporates all allegations and causes of action above into this cause of action by reference.

36. Defendants' actions demonstrate that they have recklessly disregarded the rights and safety of others, including Michael Cummisky.

37. Further, defendants' actions demonstrate that they have acted intentionally and with malice.

WHEREFORE, Plaintiffs respectfully demand judgment in their favor and against all Defendants, in an amount in excess of \$75,000.00 (exclusive of costs and interest), in addition to punitive damages, costs and whatsoever other relief that this Honorable Court deems just, given the circumstances.

A JURY TRIAL ON ALL CLAIMS IS DEMANDED.

Attorneys' lien claimed.

Respectfully submitted,

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