

4. Defendant, Church Transportation and Logistics, Inc., (hereinafter “Church Transportation”), is a corporation organized in the State of Alabama and transacting business in the State of Tennessee on the date at issue.

5. Church Transportation can be served, according to the Federal Motor Carrier Safety Administration, with a copy of the complaint and summons through its registered agent, Diane Beaver, 32 Gardner Street, Jackson, Tennessee 38301.

6. Church Transportation is registered with U.S. Department of Transportation under DOT number 0989057.

7. Defendant Danny Evans (“hereinafter Evans”) is a resident of the State of Illinois and can be served with a Summons and Complaint at 155 S. Durkin Drive, Springfield, Illinois 62704.

8. Defendant William Heater (“hereinafter Heater”) is a resident of the State of Tennessee and can be served with a Summons and Complaint at 513 County Road 218, Athens, Tennessee 37303.

9. Defendant Leslie McGuinn (“hereinafter McGuinn”) is a resident of the State of Tennessee and can be served with a Summons and Complaint at 513 County Road 218, Athens, Tennessee 37303.

10. Defendant Freightliner, LLC (hereinafter “Freightliner”) manufactures, distributes, sells, and warrants trucks.

11. Freightliner manufactured, distributed, sold and warranted the 2006 Freightliner (VIN: 1FUJA6CK062W93010) at issue in this case (hereinafter “Freightliner Truck”).

12. Freightliner is a foreign corporation, incorporated in the State of Delaware, headquartered in the State of Oregon, and doing business in the State of Tennessee.

13. Upon information and belief, Freightliner, at all times relevant to this complaint, was duly qualified and licensed to do business in the State of Tennessee with its registered agent in Knoxville, Tennessee.

14. Freightliner distributes and sells trucks and other products through dealerships located in the State of Tennessee.

15. Freightliner, LLC was purchased by Daimler Trucks North America, LLC, on January 7, 2008.

16. Defendant, Freightliner Corporation (“Freightliner Corp.”) manufactures, distributes, sells, and warrants trucks.

17. Daimler Trucks North America, LLC (“Daimler”) is a foreign corporation distributing its products in the State of Tennessee. Service can be served upon Daimler through its registered agent CT Corporation System, 388 State Street, Suite 420, Salem OR 97301.

18. Freightliner Corp. is a foreign corporation distributing its products in the State of Tennessee. Service can be served upon Freightliner Corp. through its registered agent CT Corporation System, 388 State Street, Suite 420, Salem OR 97301.

19. Jurisdiction is appropriate pursuant to 28 U.S.C. § 1332.

STATEMENT OF FACTS

20. All preceding statements of plaintiffs’ complaint are incorporated herein and re-alleged as if expressly set forth herein.

21. Upon information and belief, on or about October 30, 2008, Defendant William Heater was traveling south on Interstate 75 in McMinn County, Tennessee.

22. At the same time and place, John Sodergren was traveling south on Interstate 75.

23. Defendant Heater was traveling in excess of the posted speed limit.

24. Defendant Heater's vehicle struck the rear of John Sodergren's vehicle, which struck the guardrail and began to roll in the median, resulting in both southbound and northbound traffic on Interstate 75 to slow and/or stop.

25. Upon information and belief, on or about October 30, 2008, Defendant Evans was traveling north on Interstate 75 in a tractor-trailer owned by Defendant Church Transportation, and came to a full stop on the interstate.

26. Defendant Evans was not eligible to drive a tractor-trailer on the day of the collision.

27. Specifically, Defendant Evans had taken crack cocaine as shown by the presence of benzoylecgonine, a cocaine metabolite, in his body and his own admission.

28. Cocaine is a controlled substance and narcotic.

29. Specifically, Defendant Evans was not eligible to drive a tractor-trailer on that day, or any other, as he had taken a controlled substance forbidden to all tractor-trailer drivers.

30. Defendant Evans was under the influence of narcotics, specifically crack cocaine, on the day of the collision (see attached Official Toxicology Report dated March 25, 2009, specifically adopted by reference). Nonetheless, even though Danny Evans was under the influence of crack cocaine, Church Transportation allowed Danny Evans to drive the tractor-trailer, and Danny Evans chose to do so.

31. Defendant Evans, as a result of the cocaine in his system or as a result of negligent training, did not have his foot on the brake for 30 seconds to one minute before the collision, and as a result his brake lights were not lit. This failure prevented those drivers behind him from seeing lit brake lights and having a full opportunity to see and react to his stopped tractor trailer.

32. Defendant Evans, as a result of the cocaine in his system or as a result of negligent training, did not have his hazard lights on at the time of the collision despite slowing below the minimum speed limits and eventually stopping on the highway. This failure prevented those drivers behind him from seeing lit brake lights and having a full opportunity to see and react to the stopped tractor trailer.

33. Defendant Evans' being on the road in an impaired state, and failure to take other prudent actions of a safe professional truck driver, prevented the driver of the Plaintiff's truck from recognizing that the Defendants' tractor-trailer was stopped, and this contributed to the collision.

34. Behind Defendant Evans a Freightliner tractor-trailer driven by Mark Swim, deceased, and owned by Ryder Truck Rental, was approaching Defendant Evans' tractor-trailer.

35. The tractor-trailer driven by Mark Swim also contained Roger Thacker, a co-driver, who was in the rear sleeper compartment at the time of the collision.

36. Due to the negligence of the defendants, the truck in which Roger Thacker was a passenger rear-ended the truck driven by Defendant Evans.

37. As a result of the collision, the Freightliner Truck containing Roger Thacker caught fire.

38. The fuel leaked from the Freightliner truck causing the fire to continue and spread throughout the truck.

39. The fire in the Freightliner Truck killed Roger Thacker.

40. The Freightliner Truck was in a defective condition and unreasonably dangerous because it caught fire.

41. The fuel system and/or fuel storage system in the Freightliner Truck was in a defective condition and unreasonably dangerous because it caused, fed, or spread the fire in the Freightliner Truck.

42. The fuel system and/or fuel storage system in the Freightliner Truck was in a defective condition and unreasonably dangerous because the tanks were in a hostile environment, being surrounded by items that Defendant knew, or should have known, were likely to puncture the tank and cause fuel to leak.

43. The fuel system and/or fuel storage system in the Freightliner Truck was in a defective condition and unreasonably dangerous because of the fuel storage system placement.

44. The fuel ignition system was in a defective condition and unreasonably dangerous because it caused, fed, or spread the fire in the Freightliner Truck.

45. If striking the interior or exterior of the vehicle cause or contributed to the injuries of Roger Thacker, the occupant restraint systems and crashworthiness of the Freightliner Trucker were defective and unreasonably dangerous in failing to protect Roger Thacker.

46. The defective and unreasonably dangerous Freightliner Truck, fuel system, fuel storage system and fuel ignition system and set belt system were a proximate cause of death of Roger Thacker, alone or combined with the negligent acts of the other defendants.

47. Roger Thacker lacked sufficient methods of escape in case of emergency.

48. As set forth more fully below, each of the Defendants acted in a negligent manner which either alone, or combined and concurring with the other defendants' acts of negligence, directly and proximately caused the collision, the fire, and ultimately Roger Thacker's death.

COUNT I
CHURCH TRANSPORTATION & LOGISTICS, INC.

49. All preceding statements and allegations of plaintiff's complaint are incorporated herein and realleged as if expressly set forth herein.

50. Defendant Church Transportation is an interstate motor carrier.

51. Upon information and belief, Defendant Church Transportation is the owner of the tractor-trailer operated by Defendant Evans, and is based out of Alabama.

52. Regardless of the employment relationship, Defendant Church Transportation is the registered owner of US DOT Number 0989057 displayed on the tractor involved in this collision and is therefore responsible for the acts of the driver of that vehicle.

53. At all times relevant hereto, Defendant Church Transportation was acting by and through its employees/agents and are responsible for the acts of those employees and agents pursuant to *respondeat superior*, agency, or similar theory of law.

54. Defendant Church Transportation was negligent in hiring and/or contracting with Defendant Evans to drive the tractor-trailer at issue.

55. Defendant Church Transportation was negligent in failing to teach Defendant Evans to properly drive the tractor-trailer.

56. Defendant Church Transportation was negligent in its failure to exercise ordinary care to determine their employees', agents', and/or contractors' fitness for the task of driving a commercial vehicle interstate.

57. Defendant Church Transportation had a duty to promulgate and enforce rules and regulations to ensure its drivers and vehicles were reasonably safe, and negligently failed to do so.

58. Defendant Church Transportation was subject to, and required to obey, the "Federal Motor Carrier Safety Regulations" 49 CFR §§ 301-399 either directly, or as adopted by the

Tennessee Department of Transportation Safety Rules & Regulations 1340-6-1-.20 and pursuant to TENN. CODE ANN. §§ 65-2-102 and 65-15-113, at the time and date of the collision and at all relevant times prior to the collision.

59. Defendant Church Transportation will be shown at trial to have violated the state and Federal Motor Carrier Safety Regulations, which constitutes negligence *per se*, to include but not be limited to:

- a. Defendant Church Transportation was required by the Federal Motor Carrier Safety Regulations to ensure its drivers were drug-free and failed to do so in violation of FMCSR 392.1.
- b. Defendant Church Transportation was required by the Federal Motor Carrier Safety Regulations to train its drivers not to use drugs and failed to do so in violation of FMCSR 392.1.
- c. Defendant Church Transportation was required by the Federal Motor Carrier Safety Regulations to train its drivers to use hazard lights and failed to do so in violation of FMCSR _____

60. The negligence of Defendant Church Transportation was a proximate cause of the injuries sustained by Roger Thacker.

COUNT II
DANNY EVANS

61. All preceding statements and allegations of plaintiff's complaint are incorporated herein and realleged as if expressly set forth herein.

62. Upon information and belief, at the time of the collision, Defendant Evans was an employee and/or agent of Defendant Church Transportation.

63. Upon information and belief, at all times relevant hereto, Defendant Evans was a truck driver for Defendant Church Transportation and was acting within the scope and course of the business of Defendant Church Transportation.

64. The tractor trailer driven by Defendant Evans was driven with the permission and at the direction of Defendant Church Transportation.

65. Upon information and belief, the tractor trailer driven by Defendant Evans was driven in the course and scope of his employment with the business of Defendant Church Transportation.

66. At the time and place of this collision, Defendant Evans was generally negligent under the circumstances then and there existing in that he:

- a. Failing to operate his vehicle in a safe and prudent manner in view of the conditions which existed at the time of the collision;
- b. Such other actions or inactions that may be shown at a hearing of this cause.

67. At the time and place of this accident, Defendant Evans was negligent *per se* in that he was violating one or more of the statutes of the State of Tennessee; to include but not be limited to:

- a. TENN. CODE ANN. § 55-10-401 (Driving Under the Influence)

68. Defendant Evans was subject to, and required to obey, the “Federal Motor Carrier Safety Regulations” 49 CFR §§ 301-399 either directly, or as adopted by the Tennessee Department of Transportation Safety Rules & Regulations 1340-6-1-.20 and pursuant to TENN. CODE ANN. §§ 65-2-102 and 65-15-113, at the time and date of the collision and at all relevant times prior to the collision.

69. That Defendant Evans will be shown at trial to have violated the state and Federal Motor Carrier Safety Regulations, which constitutes negligence *per se*, to include but not be limited to:

- a. Defendant Evans was high on cocaine at the time of the collision, or while driving, in contradiction of FMCSR 382.215 and 392.4. That the impairment resulted in his negligent actions, and failures to act, which contributed to the collision.
- b. Defendant Evans failed to place warning devices behind his stopped tractor-trailer as required by FMCSR 392.22.

70. Defendant Evans' negligence was a proximate cause of the collision with the vehicle in which Roger Thacker was a passenger, and resulting damages and injuries.

COUNT III
WILLIAM HEATER

71. All preceding statements and allegations of plaintiff's complaint are incorporated herein and realleged as if expressly set forth herein.

72. Defendant Heater is guilty of the following common law acts of negligence and gross negligence proximately resulting in the injuries to Roger Thacker, which either alone, or combined and concurring with the other Defendants' acts of negligence, were the proximate cause of the collision and the resulting damages to Roger Thacker such that she should recover from Defendant Heater:

- a. Failure to keep a proper lookout for the other vehicles;
- b. Failure to exercise due care;
- c. Failure to keep his vehicle under due and reasonable control;

- d. Failing to timely apply his brakes, alter direction of travel, or take any other appropriate action when he, by the exercise of due and reasonable care, should have seen the vehicle driven by John Sodergren;
- e. Failing to operate his vehicle in a safe and prudent manner in view of the conditions which existed at the time of the collision;
- f. Speeding; and
- g. Reckless driving.

73. Defendant Heater's negligence was a proximate cause of the collision with the vehicle in which Roger Thacker was a passenger, and resulting damages and injuries.

74. At the time and place of this accident, Defendant Heater was negligent *per se* in that he was violating one or more of the statutes of the State of Tennessee; to include but not be limited to:

- a. TENN. CODE ANN. § 55-8-152 (Speeding)
- b. TENN. CODE ANN. § 55-10-205 (Reckless driving)

COUNT IV
LESLIE MCGUINN

75. All preceding statements and allegations of the complaint are incorporated herein and realleged as if expressly set forth herein.

76. In order to put the matter in controversy, and before a full investigation has been made, Defendant McGuinn (owner) is liable for the actions of Defendant Heater (driver) under the Doctrines of *respondeat superior*, Agency, Negligent Entrustment, the Family Purpose Doctrine, or Agency, pursuant to TENN. CODE ANN. § 55-50-312, or similar theory of law.

COUNT V
STRICT LIABILITY OF FREIGHTLINER AND FREIGHTLINER CORP.

77. All preceding statements and allegations of the complaint are incorporated herein and realleged as if expressly set forth herein.

78. Freightliner and Freightliner Corp. are liable to Plaintiff under the Tennessee products Liability act, TENN. CODE ANN. § 29-28-101, et .seq.

79. Freightliner and Freightliner Corp. manufactured and sold the Freightliner Truck in a defective condition and/or unreasonably dangerous at the time it left the control of Freightliner.

80. The defects in the Freightliner Truck were:

- a. A vehicle that catches on fire in a foreseeable collision;
- b. A fuel system that causes, feeds, or spreads a fire in a foreseeable collision;
- c. A fuel storage system that causes, feeds, or spreads a fire in a foreseeable collision;
- d. A fuel ignition system that causes, feeds, or spreads a fire in a foreseeable collision;
- e. Placement of a fuel system where it is likely to be punctured in a foreseeable collision;
- f. a defective occupant protection system (defined herein to include the seats, seat tracks, seat belts, airbags, glass/glazing, head restraints, padding, roll cage, and all other components thereof intended to protect occupants during foreseeable accident sequences) that was not designed and/or manufactured to adequately protect occupants during a foreseeable collision;
- g. inadequate crashworthiness;
- h. inadequate emergency egress; and/or

- i. a failure to warn about the above defects.

COUNT VI
NEGLIGENCE OF FREIGHTLINER AND FREIGHTLINER CORP.

81. All preceding statements and allegations of the complaint are incorporated herein and realleged as if expressly set forth herein.

82. Freightliner and Freightliner Corp. are liable to Plaintiff for negligent design and/or manufacture of the Freightliner Truck.

83. Freightliner and Freightliner Corp. owed a duty to drivers of Freightliner vehicles, including Roger Thacker to design and manufacture safe vehicles that prevent unnecessary injuries in ordinary and foreseeable uses.

84. Freightliner and Freightliner Corp. knew or should have known that the Freightliner Truck might be involved in a collision.

85. Freightliner and Freightliner Corp. breached its duties to Roger Thacker and his family because the Freightliner Truck contained an unreasonable risk of harm which could and did result from the ordinary and foreseeable use of the Freightliner Truck. The unreasonable risk of harm was inherent in the design, manufacture, assembly, testing, inspection, and distribution of a vehicle that catches on fire in a foreseeable accident.

86. Freightliner and Freightliner Corp. were negligent in design, manufacturing assembly, testing, marketing, distributing and selling the Freightliner Truck with the defects set forth above.

COUNT VII
FAILURE TO WARN OF FREIGHTLINER AND FREIGHTLINER CORP.

87. All preceding statements and allegations of the complaint are incorporated herein and realleged as if expressly set forth herein.

88. Freightliner and Freightliner Corp. are liable to Plaintiff for failure to warn Roger Thacker that the Freightliner Truck was in a defective condition and unreasonably dangerous.

89. It was not obvious or readily apparent to drivers of the Freightliner vehicle, including Roger Thacker, that the Freightliner Truck was in a defective condition and unreasonably dangerous.

90. Freightliner and Freightliner Corp. knew or should have known that it was not obvious or readily apparent to drivers of the Freightliner Truck, including Roger Thacker, that the Freightliner Truck was in a defective condition and unreasonably dangerous.

COUNT VIII
BREACH OF WARRANTY BY FREIGHTLINER AND FREIGHTLINER CORP.

91. All preceding statements and allegations of the complaint are incorporated herein and realleged as if expressly set forth herein.

92. Freightliner and Freightliner Corp. are liable to Plaintiff for breach of warranty.

93. Freightliner and Freightliner Corp. warranted that the Freightliner Truck was merchantable and fit for ordinary purposes.

94. The Freightliner Truck was not merchantable or fit for ordinary purposes because it was in a defective condition and unreasonably dangerous.

95. Freightliner and Freightliner Corp.'s breach of warranty caused the death of Roger Thacker.

COUNT IX
NEGLIGENCE OF DAIMLER

96. All preceding statements and allegations of the complaint are incorporated herein and realleged as if expressly set forth herein.

97. Daimler is the successor in interest and owner of Freightliner.

98. Daimler is liable to Plaintiff for negligence in failing to supervise and control the design and manufacture of the Freightliner Truck free from defects and with adequate safety equipment and crashworthiness, including but not limited to the safer fuel delivery systems, fuel ignition systems, fuel storage systems, occupant restraint systems, and crashworthiness designed and manufactured for other Daimler brands of trucks, such as Mercedes-Benz trucks, Sterling trucks, Western Star trucks, Thomas Built Buses, Detroit Diesel, and/or Mitsubishi Foto trucks.

COUNT X
STRICT LIABILITY OF DAIMLER

99. All preceding statements and allegations of the complaint are incorporated herein and realleged as if expressly set forth herein.

100. Daimler is liable to Plaintiffs under the Tennessee Products Liability Act, TENN. CODE ANN. § 29-28-101, et. seq.

101. Daimler participated in or contributed to the design, fabrication, production, compound, process, or assembly of any the Freightliner Truck and/or a component of the Freightliner Truck.

102. Daimler manufactured or participated in or contributed to the manufacture of the Freightliner Truck in a defective condition and/or unreasonably dangerous at the time it left the control of Freightliner.

103. The defects in the Freightliner Truck were:

- a. a vehicle that catches on fire in a foreseeable collision;
- b. a fuel system that causes, feeds, or spreads a fire in a foreseeable collision;
- c. a fuel storage system that causes, feeds, or spreads a fire in a foreseeable collision;
- d. a fuel ignition system that causes, feeds, or spreads a fire in a foreseeable collision.
- e. a defective occupant protection system (defined herein to include the seats, seat tracks, seat belts, airbags, glass/glazing, head restraints, padding, and all other components thereof intended to protect occupants during foreseeable accident sequences) that was not designed and/or manufactured to adequately protect occupants during a foreseeable collision;
- f. inadequate crashworthiness; and/or
- g. a failure to warn about the above defects.

COUNT XI
WRONGFUL DEATH AND SURVIVAL

104. All preceding statements and allegations of the complaint are incorporated herein and realleged as if expressly set forth herein.

105. As a direct, proximate, and foreseeable result of the acts and omissions of the defendants, Roger Thacker sustained severe injuries causing great pain and suffering and ultimately death.

106. Plaintiffs are entitled to recover from Freightliner, Freightliner Corp., and/or Daimler all damages they are entitled to recover pursuant to TENN. CODE ANN. § 20-5-113, including but not limited to damages for the medical, funeral, and burial expenses incurred; for

the great pain and suffering endured by Roger Thacker prior to his death; for the loss of earnings; for the loss of enjoyment of life of Roger Thacker; for the loss of companionship and society of Roger Thacker; and for all other damages to which Sherry Thacker and the Estate of Roger Thacker may be entitled, both legal and equitable, economic and non-economic, both in the past and in the future.

COUNT XII
AMOUNT OF DAMAGES

107. All preceding statements and allegations of the complaint are incorporated herein and realleged as if expressly set forth herein.

108. Plaintiffs demand judgment against the defendants in a sum of money that will fairly and reasonably compensate Plaintiffs for all the injuries and damages which have been suffered and will be suffered in the future, and for all damages to which they are entitled pursuant to TENN. CODE ANN. 20-5-113, said sum to be set by the jury solely in its discretion and good judgment.

COUNT V
PUNITIVE DAMAGES

109. All preceding statements and allegations of the complaint are incorporated herein and realleged as if expressly set forth herein.

110. For the reasons set forth above, the acts and omissions of Freightliner, Freightliner Corp. and/or Daimler constituted gross negligence and malice evidencing a willful, wanton, and/or reckless disregard for the safety of the general public and their consumers.

111. As a direct, proximate, and foreseeable result of the willful, wanton and/or reckless disregard for the safety of their consumers by Freightliner, Freightliner Corp. and/or Daimler, Roger Thacker sustained severe injuries and died.

112. Freightliner, Freightliner Corp. and/or Daimler are liable to Plaintiff for punitive damages, said sum to be set by the jury solely in its discretion and good judgment, in an amount which will deter similar behavior by the Defendants in the future.

JURY DEMAND

Plaintiff demands a jury trial on all issues triable by jury.

WHEREFORE, Plaintiffs pray that the following relief be granted:

- a. A trial by jury;
- b. For Summons and Complaint to issue against the Defendants;
- c. That the Plaintiffs obtain judgment against the Defendants in an amount the jury believes to be just, fair and equitable, given the facts and after hearing the issues in this case.
- d. For all such further and general relief which this Court deems just and proper.
- e. That a sum of money for punitive damages be awarded to Plaintiff;
- f. That court costs and pre-judgment and post-judgment interest be awarded to Plaintiffs; and
- g. That the Plaintiffs receive all relief to which they are entitled.

Respectfully submitted,
LAW OFFICES OF MORGAN G. ADAMS

BY: /s/ Morgan G. Adams

MORGAN G. ADAMS, BPR #013693

ATTORNEYS FOR PLAINTIFFS

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CERTIFICATE OF SERVICE

I hereby certify that on this day a true and correct copy of the foregoing pleading was filed with the Clerk of the United States District Court, Eastern District of Tennessee at Chattanooga Court using the CM/ECF system which will send notice of the electronic filing to counsel of record. All other parties will be served by regular U.S. mail as shown below. Parties may access this filing through the Court's electronic filing system.

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This 19th day of March, 2010.

/s/ Morgan G. Adams