

Mary Mietus, individually and as
Executor of the **Estate of Donald Mietus**
2250 Town Hall Road
Eagle River, WI 54521

Plaintiff,

v.

Donlen Corporation
c/o C T Corporation System,
Statutory Agent
208 S LaSalle Street, Suite 814
Chicago, IL 60604

and

**Donlen Fleet Management Services,
Inc.**
c/o C T Corporation System,
Statutory Agent
208 S LaSalle Street, Suite 814
Chicago, IL 60604

and

Donlen Trust
C/O Donlen Corporation
2315 Sanders Rd.
Northbrook, IL 60062

and

Badger Truck Repair, LLC
C/O Patrick Zdroik, Statutory Agent
1786 Adams Road
Eagle River, WI 54521

Case No.: 13 CV 26

Case Code: 30301

First Amended Complaint

and

John Doe Brake Manufacturer

and

John Doe Brake Installer,

Defendants.

COMPLAINT WITH JURY DEMAND ENDORSED HEREON

Mary Mietus and the Estate of Donald Mietus, by Mary Mietus, as Executor, files this complaint.

Overview

1. On or about December 28, 2010, the brakes of a bulk propane delivery truck owned by Donlen Trust failed to hold and the truck slid down a hill towards a building; Donald Mietus was fatally crushed between the truck and the building as he attempted to enter the cab of the truck to stop it.

Parties

Plaintiff

2. The Probate Court of Vilas County, Wisconsin has appointed Mary Mietus as Executor of the Estate of Donald Mietus. Donald Mietus resided in Eagle River, Vilas County, Wisconsin.

3. Donald Mietus is survived by his wife, Mary Mietus, his son, James Mietus and other next of kin.

Defendants

4. Defendant Donlen Corporation (“Donlen Corp”) is a corporation organized and existing under the laws of the State of Illinois, with its headquarters and principal place of business located in Northbrook, Cook County, Illinois.
5. Defendant Donlen Fleet Management Services, Inc. (“Donlen FMS”) is a corporation organized and existing under the laws of the State of Illinois, with its headquarters and principal place of business located in Northbrook, Cook County, Illinois.
6. Defendant Donlen Trust is a common law trust organized and existing under the laws of the State of Delaware, with its principal office in Northbrook, Cook County, Illinois.
7. Defendant Badger Truck Repair, LLC (Badger) is a limited liability company organized and existing under the laws of the State of Wisconsin, with its principal place of business located in Eagle River, Vilas County, Wisconsin.
8. Defendant John Doe Brake Manufacturer is yet unknown.
9. Defendant John Doe Brake Installer is also yet unknown.

Jurisdiction and Venue

10. This Court has subject matter jurisdiction, Wis. Stat. § 743.03, as well as personal jurisdiction of the Defendants.
11. A substantial part of the events or omissions giving rise to Plaintiff's claims took place in Vilas County, Wisconsin. Therefore, the Vilas County Circuit Court is proper venue. Wis. St. § 801.50.

Background Facts

12. On about December 28, 2010, while in the course and scope of his employment with AmeriGas Propane L.P., Donald Mietus was making a propane delivery to a residence in Eagle River, Wisconsin.
13. As Donald Mietus was dispensing the propane, the propane delivery truck slid down an incline towards a garage building.
14. Donald Mietus chased the truck and was attempting to climb into the cab to stop the truck when he was crushed between the drivers' side door and the cab of the truck when the truck struck the garage building.
15. Post-accident inspections revealed the propane delivery truck had defective or improperly maintained brakes that rendered it out of service, or illegal to be operating on the road.

FIRST CAUSE OF ACTION

Wrongful Death- Defendant Donlen Fleet Management Services, Inc.

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

12. Plaintiff brings this cause of action under Wis. St. § 895.03 and all other relevant sections of the Wisconsin Statutes.
13. On information and belief, Defendant Donlen FMS was contracted by AmeriGas Propane, L.P. (“AmeriGas”), to manage and administrate the maintenance and service of the AmeriGas vehicle fleet.
14. On information and belief, the agreement between AmeriGas and Defendant Donlen FMS gave Donlen FMS authority to advise AmeriGas on maintenance issues, gave Donlen FMS control over which vendors of maintenance goods and services AmeriGas could use and gave Donlen FMS control over how much and how quickly said vendors were paid.
15. Defendant Donlen FMS had a duty to take reasonable steps to ascertain and that any person or entity that Donlen FMS authorized, hired, retained or contracted with to maintain AmeriGas vehicles was reasonably reliable, skilled and safe.
16. Defendant Donlen FMS had a continuing duty to reasonably monitor such persons or entities to ensure they provided reasonably reliable, skilled and safe workmanship.
17. Defendant Donlen FMS failed in its above-mentioned duties and was therefore negligent.
18. Donald Mietus’ death was a direct and proximate result of Defendant Donlen’s neglect.

19. As a direct and proximate result of Defendant Donlen's neglect, Donald Mietus experienced conscious pain and suffering and his estate and his next of kin have suffered future wage loss, the loss of future earning potential, other pecuniary loss and loss of Donald Mietus' consortium, society and companionship, love and affection.

SECOND CAUSE OF ACTION

Wrongful Death - Defendant Donlen Trust

20. All allegations and causes of action above are incorporated into this cause of action by reference.
21. Upon information and belief, Defendant Donlen Trust owns and leases to AmeriGas the vehicle involved in the death of Donald Mietus.
22. Defendant Donlen Trust, as the owner of the vehicle, had a duty to ensure the vehicle was properly and safely maintained.
23. Defendant Donlen Trust failed in its above-mentioned duties and was therefore negligent.
24. Donald Mietus' death was a direct and proximate result of Defendant Donlen Trust's neglect.
25. As a direct and proximate result of Defendant Donlen Trust's neglect, Donald Mietus experienced conscious pain and suffering and his estate and his next of kin have suffered future wage loss, the loss of future earning potential, other pecuniary loss and loss of Donald Mietus' consortium, society and companionship, love and affection.

THIRD CAUSE OF ACTION

Strict Liability – Donlen Trust

26. All allegations and causes of action above are incorporated into this cause of action by reference.
27. Upon information and belief, Defendant Donlen Trust owns and leases to AmeriGas the vehicle involved in the death of Donald Mietus.
28. The truck was defective when it left the control of Donlen Trust.
29. The defect rendered the truck legally out of service and unreasonably dangerous to persons or property.
30. The defective truck driven by Donald Mietus reached AmeriGas without substantial change in the condition in which it was sold.
31. The defect was a proximate cause of this incident, the death of Donald Mietus and the resulting damages listed in this complaint.
32. Donlen Trust is strictly liable for the death of Donald Mietus and to the estate of Donald Mietus and his next of kin which have suffered future wage loss, the loss of future earning potential, other pecuniary loss and loss of Donald Mietus' consortium, society and companionship, love and affection.

FOURTH CAUSE OF ACTION

Liability of Defendant Donlen Corporation.

33. All allegations and causes of action above are incorporated into this cause of action by reference.
34. Upon information and belief, Defendant Donlen Corp is the legal successor to Defendant Donlen FMS.

35. Donlen Corp is also the true and lawful attorney in fact for Donlen Trust.
36. Upon information and belief, Defendant Donlen Corp or its officers, agents or employees make all substantive decisions in the management and disposition of the Donlen Trust.
37. Upon information and belief, Donlen Corp or its officers, agents, employees or other Donlen entities are the beneficiaries of Donlen Trust.
38. Accordingly, Defendant Donlen Corp is responsible and liable for any liability of Defendant Donlen FMS or Defendant Donlen Trust.

FIFTH CAUSE OF ACTION

Wrongful Death- Defendant Badger

39. All allegations and causes of action above are incorporated into this cause of action by reference.
40. Upon information and belief, Defendant Badger was subcontracted by Defendant Donlen to make various repairs, including repairs to the brakes of the AmeriGas truck that Donald Mietus was operating on or about December 28, 2010.
41. Defendant Badger had a duty to identify deficiencies with the truck.
42. Defendant Badger had a duty to make proper and reasonably safe repairs.
43. Defendant Badger failed in its above-mentioned duties and was therefore negligent.

44. Donald Mietus' death was a direct and proximate result of Defendant Badger's neglect.
45. As a direct and proximate result of Defendant Badger's neglect, Donald Mietus experienced conscious pain and suffering and his estate and his next of kin have suffered future wage loss, the loss of future earning potential, other pecuniary loss and loss of Donald Mietus' consortium, society and companionship, love and affection.

SIXTH CAUSE OF ACTION

Strict Liability of John Doe Brake Manufacturer – Manufacturing Defect

46. All allegations and causes of action above are incorporated into this cause of action by reference.
47. Defendant John Doe Brake Manufacturer manufactured the brake that failed on the AmeriGas truck.
48. The brake was defective when it left the control of the manufacturer.
49. The defective brake rendered the truck legally out of service and unreasonably dangerous to persons or property.
50. The defective brake reached the AmeriGas truck driven by Donald Mietus without substantial change in the condition in which it was sold.
51. The manufacturing defect was a proximate cause of this incident, the death of Donald Mietus and the resulting damages listed in this complaint.
52. John Doe Brake Manufacturer is strictly liable for the death of Donald Mietus and to the estate of Donald Mietus and his next of kin which

have suffered future wage loss, the loss of future earning potential, other pecuniary loss and loss of Donald Mietus' consortium, society and companionship, love and affection.

SEVENTH CAUSE OF ACTION

Strict Liability of Badger – Manufacturing Defect

53. All allegations and causes of action above are incorporated into this cause of action by reference.
54. Defendant Badger sold or distributed the defective brake when it installed the brake in the AmeriGas truck.
55. The defective brake rendered the truck legally out of service and unreasonably dangerous to persons or property.
56. The manufacturing defect was a proximate cause of this incident, the death of Donald Mietus and the resulting damages listed in this complaint.
57. Badger is strictly liable for the death of Donald Mietus and to the estate of Donald Mietus and his next of kin which have suffered future wage loss, the loss of future earning potential, other pecuniary loss and loss of Donald Mietus' consortium, society and companionship, love and affection.
58. Badger is strictly liable for the conscious pain and suffering and death of Donald Mietus and to his estate and next of kin which have suffered future wage loss, the loss of future earning potential, other pecuniary

loss and loss of Donald Mietus' consortium, society and companionship, love and affection.

EIGHT CAUSE OF ACTION

Strict Liability of John Doe Installer – Manufacturing Defect

59. All allegations and causes of action above are incorporated into this cause of action by reference.
60. Defendant John Doe Installer sold or distributed the defective brake when it installed the brake in the AmeriGas truck.
61. The defective brake rendered the truck legally out of service and unreasonably dangerous to persons or property.
62. The manufacturing defect was a proximate cause of this incident, the death of Donald Mietus and the resulting damages listed in this complaint.
63. John Doe Installer is strictly liable for the death of Donald Mietus and to the estate of Donald Mietus and his next of kin which have suffered future wage loss, the loss of future earning potential, other pecuniary loss and loss of Donald Mietus' consortium, society and companionship, love and affection.
64. John Doe Installer is strictly liable for the conscious pain and suffering and death of Donald Mietus and to his estate and next of kin which have suffered future wage loss, the loss of future earning potential, other pecuniary loss and loss of Donald Mietus' consortium, society and companionship, love and affection.

NINTH CAUSE OF ACTION

*Claim for Punitive Damages against Donlen FMS, Donlen Corp, Donlen Trust
and Badger*

65. All allegations and causes of action above are incorporated into this cause of action by reference.
66. The actions of Defendants Donlen FMS, Donlen Corp, Donlen Trust and Badger demonstrate an intentional disregard for the rights and safety of Donald Mietus and the rest of the motoring public. Plaintiff demands punitive damages against Donlen FMS, Donlen Corp, Donlen Trust and Badger.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Compensatory damages consisting of loss of life, pain and suffering, past and future loss of consortium, and loss of earning capacity, among other things, against all Defendants in an amount proven to the trier of fact's satisfaction for all causes of action above;
- B. Punitive damages against Defendants Donlen FMS, Donlen Corp, Donlen Trust and Badger in an amount proven to the trier of fact's satisfaction for all causes of action above;
- C. Interest, costs, and statutory attorney fees;

D. Such other relief as justice requires or as this Court or the trier of fact sees fit under principles of law and equity.

Respectfully submitted,

Steven M. Lucareli Bar No. 1006601
Lucareli & Erickson Law Offices, LLC
P.O. Box 1357
433 East Sheridan Street
Eagle River, WI 54521
Attorney for Plaintiff

JURY DEMAND

Plaintiff demands a jury for all triable issues.

Steven M. Lucareli Bar No. 1006601
Lucareli & Erickson Law Offices, LLC
P.O. Box 1357
433 East Sheridan Street
Eagle River, WI 54521
Attorney for Plaintiff