

IN THE COURT OF COMMON PLEAS, WARREN COUNTY, OHIO

Shelly Orren, as Administrator of
the **Estate of Amanda E. Poe**

and

Eddy Brown, as Administrator of
the **Estate of Nicholas Poe**

Plaintiffs,

v.

BWF Corporation
c/o Donald Tharr, Statutory Agent
10016 Wilmington Road
Clarksville, OH 45113

and

John R. Jurgensen Co.
11641 Mosteller Rd.
Cincinnati, OH 45241
c/o John Scott, Statutory Agent
SW 4th St. #2200
Cincinnati, OH 45202

and

Case No.:

Honorable:

**COMPLAINT WITH JURY DEMAND
ENDORSED HEREON;**

**INTEROGATORRIES,
REQUESTS FOR PRODUCTION &
REQUESTS FOR ADMISSIONS
ATTACHED**

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Dean Tharr Enterprises, LLC
10016 Wilmington Rd.
Clarksville, OH 45113

and

Timothy L. Smith
3885 State Route 136
Hillsboro, OH 45133

Defendants.

Preliminary Statement and Jurisdiction

1. A young couple was killed when their car crashed into the back of a dump truck on I-75 that had been doing construction work in the median and pulled out in front them. The dump truck was overweight at the time of the collision and was cited for having multiple inoperable rear lights. In addition, the driver of the dump truck refused to submit to a drug and alcohol test.
2. Plaintiffs' decedents Nicholas and Amanda Poe are citizens of the State of Tennessee. Defendant BWF Corporation is a corporation organized and existing under the laws of the State of Ohio. Defendant John R. Jurgensen Company is a corporation organized and existing under the laws of the State of Ohio. Defendant Dean Tharr Enterprises LLC is a corporation organized and existing under the laws of the State of Ohio. Defendant Timothy L. Smith is a resident and citizen of the State of Ohio.

FIRST CAUSE OF ACTION

Wrongful Death—Negligence of Truck Driver

3. Plaintiffs bring this Cause of Action and all Causes of Action in this Complaint under Ohio's Wrongful Death Statute, found at R.C. § 2125.
4. On or about October 17, 2009, Nicholas Poe was driving southbound on Interstate 75 in the far left lane with his wife, Amanda Poe, as a passenger. Defendant Timothy Smith was driving a dump truck in the center median of Interstate 75. Smith then pulled out onto Interstate 75 Southbound into the far left lane occupied by the Poe vehicle. Defendant Smith failed to yield to the Poe vehicle, which struck Defendants' dump truck in the rear.
5. Defendant Timothy Smith had a duty to obey all traffic laws, to yield to Plaintiffs and other vehicles, to keep his running lights in good condition, to ensure his truck was visible and to operate his truck in a safe and reasonable manner.
6. Defendant Timothy Smith failed in the above-mentioned duties and is therefore negligent.
7. Defendant Timothy Smith=s negligence was the direct and proximate cause of Nicholas Poe's and Amanda Poe's injuries and deaths.
8. As a direct and proximate result of Defendant Timothy Smith=s negligence, Nicholas Poe and Amanda Poe lost future wages.

9. As a direct and proximate result of the negligence of all defendants, Nicholas Poe's surviving parents have experienced loss of his society, including loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education, along with mental pain, anguish and emotional trauma.
10. As a direct and proximate result of the negligence of all defendants, Amanda Poe's surviving parents have experienced loss of her society, including loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education, along with mental pain, anguish and emotional trauma.

SECOND CAUSE OF ACTION

Survival Action

11. All allegations and causes of action above are incorporated into this cause of action by reference.
12. As a direct and proximate result of the negligence of all defendants, Amanda and Nicholas Poe experienced terror and conscious anguish, suffering and pain prior to their deaths.

THIRD CAUSE OF ACTION

Statutory Violations of Truck Driver

13. Defendant Timothy Smith violated state and federal statutes and regulations, including but not limited to 49 C.F.R. §§ 350-399, and O.A.C.

4901:2-5-02 through 4901:2-5-08. At the minimum, defendant Smith violated:

- a. 49 C.F.R. § 393.9(a) for having an inoperable right rear lower light, an inoperable left rear lower light, and an inoperable left rear upper light;
 - b. R.C. § 5577.04 for operating an overweight vehicle;
 - c. 49 C.F.R. § 382.211 and §382.303 and O.A.C. 4901:2-5-02 for refusing to submit to a post-accident alcohol and controlled substances test.
14. Defendant Timothy Smith=s statutory violations directly and proximately caused Plaintiffs= decedents= damages and deaths.
15. Defendant Timothy Smith is negligent *per se* based on these statutory and regulatory violations.

FOURTH CAUSE OF ACTION

Claim for Punitive Damages against Truck Driver

16. All allegations and causes of action above are incorporated into this cause of action by reference.
17. Defendant Timothy Smith=s actions demonstrate a conscious disregard for the rights and safety of Plaintiffs= decedents Nicholas Poe and Amanda Poe and the rest of the motoring public. Plaintiffs demand punitive damages against Timothy Smith.

FIFTH CAUSE OF ACTION
Vicarious Liability of BWF Corporation

18. All allegations and causes of action above are incorporated into this cause of action by reference.
19. Defendant Timothy Smith was the employee, agent, servant, or independent contractor for BWF Corporation. Accordingly, BWF Corporation is vicariously liable for the acts of Defendant Timothy Smith described in the causes of action above.

SIXTH CAUSE OF ACTION
Strict Liability of BWF Corporation

20. All allegations and causes of action above are incorporated into this cause of action by reference.
21. BWF Corporation is the registered owner of the USDOT number 0948110 displayed on the truck involved in this collision and is therefore responsible for the acts of defendant driver.

SEVENTH CAUSE OF ACTION
Negligence of BWF Corporation

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

23. Defendant BWF Corporation had a duty to act reasonably in hiring and retaining Timothy Smith and to promulgate and enforce rules and regulations to ensure its drivers and vehicles were reasonably safe.
24. Defendant John R. Jurgensen Company had a duty to act reasonably to ensure that drivers on I-75 were reasonably safe.
25. Defendant BWF Corporation failed in the above-mentioned duties and was therefore negligent.
26. In addition, BWF Corporation undertook for consideration to render services which it did or should have recognized as necessary for the protection of Amanda and Nicholas Poe and all drivers on the road.
27. BWF Corporation failed to exercise reasonable care to protect Amanda and Nicholas Poe and all drivers on the road by increasing the risk of harm and by undertaking a duty owed by other Defendants to Amanda and Nicholas Poe and all drivers on the road.
28. Defendant BWF Corporation's negligence was the direct and proximate cause of Amanda and Nicholas Poe's deaths and the damages listed in this complaint.

EIGHTH CAUSE OF ACTION

Joint Venture

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

30. BWF combined with other defendants to form an association of parties engaged in and carrying out a single business venture for joint profit. BWF stands as principal and agent for each of the co-defendants.

NINTH CAUSE OF ACTION

Statutory Violations of BWF Corporation

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

32. Defendant BWF Corporation violated state and federal statutes and regulations, including but not limited to 49 C.F.R. §§ 350-399, and O.A.C. 4901:2-5-02 through 4901:2-5-08. At the minimum, defendant BWF Corporation violated:
 - a. 49 C.F.R. § 393.1 and § 393.9(a) for failure to comply with the requirement that the dump truck have an operable right rear lower light, an operable left rear lower light, and an operable left rear upper light;

 - b. R.C. § 5577.04 for permitting the operation of an overweight vehicle;

- c. 49 C.F.R. § 382.211 and §382.303 and O.A.C. 4901:2-5-02 for permitting defendant Smith to refuse to submit to a post-accident alcohol and controlled substances test.
33. Defendant BWF Corporation's statutory violations directly and proximately caused Plaintiffs' decedents' damages and deaths.
34. Defendant BWF Corporation is negligent *per se* based on these statutory and regulatory violations.

TENTH CAUSE OF ACTION

Claim for Punitive Damages against BWF Corporation

35. All allegations and causes of action above are incorporated into this cause of action by reference.
36. Defendant BWF Corporation's actions demonstrate a conscious disregard for the rights and safety of Plaintiffs' decedents Nicholas Poe and Amanda Poe and the rest of the motoring public. Plaintiffs demand punitive damages against BWF Corporation.

ELEVENTH CAUSE OF ACTION

Vicarious Liability of John R. Jurgensen Company

37. All allegations and causes of action above are incorporated into this cause of action by reference.
38. Defendant Timothy Smith was the employee, agent, servant, or independent contractor for John R. Jurgensen Company. Accordingly, John R. Jurgensen

Company is vicariously liable for the acts of Defendant Timothy Smith for the causes of action above.

TWELFTH CAUSE OF ACTION

Negligence of John R. Jurgensen Company

39. All allegations and causes of action above are incorporated into this cause of action by reference.
40. Defendant John R. Jurgensen Company had a duty to act reasonably in hiring and retaining Timothy Smith and to promulgate and enforce rules and regulations to ensure its drivers and vehicles were reasonably safe.
41. Defendant John R. Jurgensen Company had a duty to act reasonably to ensure that drivers on I-75 were reasonably safe.
42. Defendant John R. Jurgensen Company failed in the above-mentioned duties and was therefore negligent.
43. In addition, John R. Jurgensen Company undertook for consideration to render services which it did or should have recognized as necessary for the protection of Amanda and Nicholas Poe and all drivers on the road.
44. John R. Jurgensen Company failed to exercise reasonable care to protect Amanda and Nicholas Poe and all drivers on the road by increasing the risk of harm and by undertaking a duty owed by other Defendants to Amanda and Nicholas Poe and all drivers on the road.

45. Defendant John R. Jurgensen Company's negligence was the direct and proximate cause of Amanda and Nicholas Poe's deaths and the damages listed in this complaint.

THIRTEENTH CAUSE OF ACTION

Joint Venture

46. All allegations and causes of action above are incorporated into this cause of action by reference.
47. John R. Jurgensen Company combined with other defendants to form an association of parties engaged in and carrying out a single business venture for joint profit. John R. Jurgensen Company stands as principal and agent for each of the co-defendants.

FOURTEENTH CAUSE OF ACTION

Statutory Violations of John R. Jurgensen Company

48. All allegations and causes of action above are incorporated into this cause of action by reference.
49. Defendant John R. Jurgensen Company violated state and federal statutes and regulations, including but not limited to 49 C.F.R. §§ 350-399, and O.A.C. 4901:2-5-02 through 4901:2-5-08. At the minimum, defendant John R. Jurgensen Company violated:
- a. 49 C.F.R. § 393.1 and § 393.9(a) for failure to comply with the requirement that the dump truck have an operable right rear lower

light, an operable left rear lower light, and an operable left rear upper light;

- b. R.C. § 5577.04 for permitting the operation of an overweight vehicle;
 - c. 49 C.F.R. § 382.211 and §382.303 and O.A.C. 4901:2-5-02 for permitting defendant Smith to refuse to submit to a post-accident alcohol and controlled substances test.
50. Defendant John R. Jurgensen Company's statutory violations directly and proximately caused Plaintiffs' decedents' damages and deaths.
51. Defendant John R. Jurgensen Company is negligent *per se* based on these statutory and regulatory violations.

FIFTEENTH CAUSE OF ACTION

Claim for Punitive Damages against John R. Jurgensen Company

52. All allegations and causes of action above are incorporated into this cause of action by reference.
53. Defendant John R. Jurgensen Company's actions demonstrate a conscious disregard for the rights and safety of Plaintiffs' decedents Nicholas Poe and Amanda Poe and the rest of the motoring public. Plaintiffs demand punitive damages against John R. Jurgensen Company.

SIXTEENTH CAUSE OF ACTION

Vicarious Liability of Dean Tharr Enterprises LLC

54. All allegations and causes of action above are incorporated into this cause of action by reference.
55. Defendant Timothy Smith was the employee, agent, servant, or independent contractor for Dean Tharr Enterprises LLC. Accordingly, Dean Tharr Enterprises LLC is vicariously liable for the acts of Defendant Timothy Smith for the causes of action above.

SEVENTEENTH CAUSE OF ACTION

Negligence of Dean Tharr Enterprises LLC

56. All allegations and causes of action above are incorporated into this cause of action by reference.
57. Defendant Dean Tharr Enterprises LLC had a duty to act reasonably in hiring and retaining Timothy Smith, BWF Corporation and/or John R. Jurgensen Company and to promulgate and enforce rules and regulations to ensure its drivers and vehicles were reasonably safe.
58. Defendant Dean Tharr Enterprises LLC had a duty to act reasonably to ensure that drivers on I-75 were reasonably safe.
59. Defendant Dean Tharr Enterprises LLC failed in the above-mentioned duties and was therefore negligent.

60. In addition, Dean Tharr Enterprises LLC undertook for consideration to render services which it did or should have recognized as necessary for the protection of Amanda and Nicholas Poe and all drivers on the road.
61. Dean Tharr Enterprises LLC failed to exercise reasonable care to protect Amanda and Nicholas Poe and all drivers on the road by increasing the risk of harm and by undertaking a duty owed by other Defendants to Amanda and Nicholas Poe and all drivers on the road.
62. Defendant Dean Tharr Enterprises LLC's negligence was the direct and proximate cause of Amanda and Nicholas Poe's deaths and the damages listed in this complaint.

EIGHTEENTH CAUSE OF ACTION

Joint Venture

63. All allegations and causes of action above are incorporated into this cause of action by reference.
64. Dean Tharr Enterprises LLC combined with other defendants to form an association of parties engaged in and carrying out a single business venture for joint profit. Dean Tharr Enterprises LLC stands as principal and agent for each of the co-defendants.

NINETEENTH CAUSE OF ACTION

Statutory Violations of Dean Tharr Enterprises LLC

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

66. Defendant Dean Tharr Enterprises LLC violated state and federal statutes and regulations, including but not limited to 49 C.F.R. § 350-399, and O.A.C. 4901:2-5-02 through 4901:2-5-08. At the minimum, defendant Dean Tharr Enterprises LLC violated:
- a. 49 C.F.R. § 393.1 and § 393.9(a) for failure to comply with the requirement that the dump truck have an operable right rear lower light, an operable left rear lower light, and an operable left rear upper light;
 - b. R.C. § 5577.04 for permitting the operation of an overweight vehicle;
 - c. 49 C.F.R. § 382.211 and §382.303 and O.A.C. 4901:2-5-02 for permitting defendant Smith to refuse to submit to a post-accident alcohol and controlled substances test.
67. Defendant Dean Tharr Enterprises LLC's statutory violations directly and proximately caused Plaintiffs' decedents' damages and deaths.
68. Defendant Dean Tharr Enterprises LLC is negligent *per se* based on these statutory and regulatory violations.

TWENTIETH CAUSE OF ACTION

Claim for Punitive Damages against Dean Tharr Enterprises LLC

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

70. Defendant Dean Tharr Enterprises LLC's actions demonstrate a conscious disregard for the rights and safety of Plaintiffs' decedents Nicholas Poe and Amanda Poe and the rest of the motoring public. Plaintiffs demand punitive damages against Dean Tharr Enterprises LLC.

WHEREFORE plaintiff demands judgment against defendants in an amount in excess of \$25,000 for all causes of action above; plus punitive damages against all defendants; 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.

Plaintiff respectfully requests the Clerk of the Warren County Common Pleas Court serve all parties with a copy of the complaint and summons via certified mail.

Respectfully submitted,

Michael Jay Leizerman (63945)
E.J. Leizerman & Associates, LLC
Attorneys for Plaintiff

Jury Demand

Plaintiff demands a jury for all triable issues.

Michael Jay Leizerman (63945)
E.J. Leizerman & Associates, LLC
Attorneys for Plaintiff