

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

TRIAL COURT DEPARTMENT
SUPERIOR COURT
CIVIL ACTION NO. 13-00150

.....)
NILANTHI MOTSENIGOS,)
on behalf of the Estate of Alexander)
Motsenigos,)

Plaintiff,)

v.)

DANA E.A. MCCOOMB,)
C.J. MABARDY, INC., and)
TRUCK LEASING FAMILY)
LIMITED PARTNERSHIP,)

Defendants)
_____)

PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS TO
DEFENDANT C. J. MABARDY, INCORPORATED

COMES NOW, Plaintiff NILANTHI MOTSENIGOS, by and through her counsel of record, and requires Defendant DANA MCCOOMB to answer under oath the following Requests for Admissions within 30 days from the date of service of these Requests, pursuant to Mass. R. Civ. P.

36.¹

¹ As provided for in Rule 36(a), the party to whom the request is directed must serve upon the party requesting the admission either (1) a written statement signed by the party under the penalties of perjury specifically (i) denying the matter or (ii) setting forth in detail why the answering party cannot truthfully admit or deny the matter; or (2) a written objection addressed to the matter, signed by the party or his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter

DEFINITIONS

As used herein, the terms listed below are defined as follows:

1. **"Person"** means any natural person, corporation, partnership, proprietorship, association, organization, group of persons, or any governmental body or subdivision thereof.
2. **"Subject Incident"** means the incident wherein Alexander Mosenigos sustained fatal injuries which occurred on August 24, 2012, at or around 1:58 P.M., in Wellesley, Massachusetts.
3. **"You," "Your,"** or **"C. J. MABARDY"** means Defendant C. J. MABARDY, INCORPORATED.
4. **"DANA MCCOOMB"** means Defendant DANA MCCOOMB.

REQUESTS FOR ADMISSION

1. The USDOT number for C. J. MABARDY is 310747.
2. C. J. MABARDY was involved in intrastate commerce at the time of the Subject Incident.
3. C. J. MABARDY was involved in interstate commerce at the time of the Subject Incident.
4. C. J. MABARDY is a motor carrier as defined by the Federal Motor Carrier Safety Regulations.
5. C. J. MABARDY was a motor carrier as defined by the Federal Motor Carrier Safety Regulations at the time of the Subject Incident.
6. C. J. MABARDY was subject to the Federal Motor Carrier Safety Regulations at the time of the Subject Incident.
7. C. J. MABARDY was subject to the Federal Motor Carrier Safety Regulations at all

or set forth reasons why he cannot admit or deny it.

times while DANA MCCOMB has been employed with them as a driver.

8. DANA MCCOOMB was subject to the Federal Motor Carrier Safety Regulations at the time of the Subject Incident.
9. On August 24, 2012, C. J. MABARDY had exclusive control over the tractor that DANA MCCOOMB was operating at the time of the Subject Incident.
10. On August 24, 2012, C. J. MABARDY was the owner of a trailer involved in the Subject Incident.
11. On August 24, 2012 at 1:58 PM, DANA MCCOOMB was operating a C.J. MABARDY tractor trailer on Weston Road in the vicinity of Linden Street in Wellesley, MA.
12. On August 24, 2012, at the time of the Subject Incident, DANA MCCOOMB was an agent of C. J. MABARDY.
13. On August 24, 2012, at the time of the Subject Incident, DANA MCCOOMB was an employee of C. J. MABARDY.
14. At the time of the Subject Incident, DANA MCCOOMB was acting within the course and scope of his employment or agency with C. J. MABARDY.
15. On August 24, 2012, at the time of the Subject Incident, DANA MCCOOMB was operating the tractor-trailer with the permission of C. J. MABARDY.
16. On August 24, 2012, at the time of the Subject Incident, DANA MCCOOMB was operating the tractor-trailer with the knowledge of C. J. MABARDY and in furtherance of the business interests of C.J. MABARDY.
17. On August 24, 2012, C. J. MABARDY had entrusted a commercial motor vehicle to

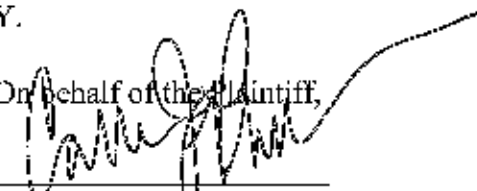
DANA MCCOOMB knowing that he would be driving that commercial motor vehicle on the roads of the Town of Wellesley, MA.

18. On August 24, at the time C.J. MABARDY entrusted the commercial motor vehicle to DANA MCCOOMB, C. J. MABARDY knew that DANA MCCOOMB had a propensity to speed.
19. On August 24, at the time C.J. MABARDY entrusted the commercial motor vehicle to DANA MCCOOMB, C. J. MABARDY knew that DANA MCCOOMB had a poor driving record.
20. During the year preceding the Subject Incident, C. J. MABARDY had the ability, through its FleetMatics system, to monitor the driving behavior of DANA MCCOOMB.
21. DANA MCCOOMB was involved in a collision with ALEX MOSTENIGOS on August 24, 2012 at approximately 1:58 PM on Weston Road in the Town of Wellesley, MA.
22. DANA MCCOOMB was NOT involved in a collision with ALEX MOSTENIGOS on August 24, 2012 at approximately 1:58 PM on Weston Road in the Town of Wellesley, MA.
23. C.J MABARDY does not know whether DANA MCCOOMB was involved in a collision with ALEX MOSTENIGOS on August 24, 2012 at approximately 1:58 PM on Weston Road in the Town of Wellesley, MA.
24. C.J MABARDY had an Accident Review Board review the Subject Incident.
25. C.J MABARDY has made a preventability determination in connection with the Subject Incident.

26. C.J MABARDY has concluded that the Subject Incident was preventable on the part of its driver DANA MCCOOMB.
27. C.J MABARDY has concluded that the Subject Incident was NOT preventable on the part of its driver DANA MCCOOMB.
28. C.J MABARDY has not concluded one way or another whether the Subject Incident was preventable on the part of its driver DANA MCCOOMB.
29. C.J MABARDY accepts full responsibility for DANA MCCOOMB causing the Subject Incident.
30. C.J MABARDY accepts partial responsibility for DANA MCCOOMB causing the Subject Incident.
31. C.J MABARDY accepts no responsibility for DANA MCCOOMB causing the Subject Incident.
32. C.J MABARDY has proof that ALEX MOSTENIGOS is responsible for the Subject Incident.
33. C.J MABARDY blames ALEX MOSTENIGOS for the Subject Incident.
34. C.J MABARDY blames some person or entity other than DANA MCCOMB and ALEX MOSTENIGOS for the Subject Incident.
35. C.J MABARDY blames the Town of Wellesley for causing the Subject Incident.
36. C.J MABARDY blames the narrow road for causing the Subject Incident.
37. DANA MCCOOMB has tested positive for marijuana on more than one occasion while employed with C.J MABARDY.
38. DANA MCCOOMB has tested positive for marijuana on only one occasion while employed with C.J MABARDY.

39. DANA MCCOOMB was a professional driver on the date and time of the Subject Incident.
40. DANA MCCOOMB operated a commercial motor vehicle for C.J. Mabardy while his driver's license had been suspended.
41. C. J. MABARDY is properly named in the Complaint.
42. Venue is proper in this Court.
43. Jurisdiction is proper in this Court.
44. Service was proper upon C. J. MABARDY.

On behalf of the Plaintiff,



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