

THE STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Latorre M. Choice as the Personal  
Representative of the Estate of  
Elex R. Paul a/k/a Alex R. Paul

Plaintiffs,

vs.

Samuel J. Brown, by and through his  
Guardian ad Litem, Lisa Richardson Mobley  
and Benton Express, Inc.

Defendants.

**2011-CP-23- 2382**

**COMPLAINT**  
(JURY TRIAL REQUESTED)

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENS:MR  
2011 APR - 8 A 9:59

The Plaintiff would respectfully show that:

1. Plaintiff is the duly appointed, qualified, and acting Personal Representative of the Estate of Elex R. Paul a/k/a Alex R. Paul (hereinafter, Paul), as will appear from the records of the Probate Court for Greenville County in Probate File
2. Elex R. Paul died intestate on March 26, 2009, leaving as his beneficiaries under South Carolina Code Ann. Section 15-51-20 (1976, as amended), his minor children, Alex Deandre Paul and Aleiyha Tanai Crittenden.
3. Plaintiff brings this action in her fiduciary capacity under and by virtue of the authority of South Carolina Code Ann. Sections 15-51-10, 15-51-20, and 15-51-40 (1976, as amended) for the benefit of the afore-named beneficiaries, and under and by virtue of South Carolina Code Ann. Section 15-5-90 (1976, as amended) to recover for the injuries and damages sustained by the decedent.
4. Upon information and belief, at the time the cause of action arose, Samuel J. Brown (hereinafter, Brown) was a citizen and resident of the County of Greenville, State of South Carolina.
5. Upon information and belief, Brown is currently incapacitated due to injuries sustained in an accident which occurred subsequent to the motor vehicle accident that is the

subject of this Complaint, and which is unrelated thereto.

6. Upon information and belief, Lisa Richardson Mobley, Attorney at Law, was appointed Guardian ad Litem for Brown on or about April 9, 2010, by the Probate Court for the County of Greenville, South Carolina.

7. Upon information and belief, the Defendant, Benton Express, Inc. (hereinafter Defendant Benton), is a corporation organized and existing under the laws of the State of Georgia, is registered with the South Carolina Secretary of State, and maintains agents and servants in the County of Greenville, State of South Carolina for the purpose of carrying on its business.

8. That at all times herein mentioned, Brown was the agent, servant and/or employee of the Defendant Benton, and was at all times herein mentioned acting within the course and scope of his employment and/or agency.

9. On or about, March 26, 2009, Elex R. Paul a/k/a Alex R. Paul was the passenger in a 2001 Mazda Miata driven by Valerie Ann Kruska (hereinafter, Kruska). Kruska was traveling east on Impact Drive at the intersection of Impact Drive and South Carolina Primary Road 291, also known as South Pleasantburg Drive, in Greenville County, State of South Carolina.

10. At the same time, Brown was traveling north on South Carolina Primary 291, approaching the intersection of South Carolina Primary Road 291 and Impact Drive. Brown was traveling in the far right lane of South Carolina Primary Road 291, driving a 2007 Sterling A9500 Semi-truck and trailer, which is owned by Defendant Benton.

11. Brown caused the 2007 Sterling A9500 Semi-truck and trailer to unlawfully enter the intersection of South Carolina Primary Road 291 and Impact Drive, striking the 2001 Mazda Miata on the right or passenger side.

12. This court has jurisdiction over this matter pursuant to Section 15-7-30, South Carolina Code of Laws (1976, as amended).

13. As a result of this collision, Plaintiff's decedent suffered severe injuries to his head, chest, abdomen, legs and other parts of his body, and he survived the accident, but those

injuries caused excruciating pain and suffering causing Plaintiff's Decedent to undergo treatment by emergency medical personnel.

**FOR A FIRST CAUSE OF ACTION**

**(Defendants' negligence in causing Elex R. Paul's injuries and death - Wrongful death)**

14. Paragraphs one (1) through thirteen (13) are incorporated by reference as if repeated verbatim herein.

15. That the injuries to and death of Elex R. Paul were proximately caused by the joint and several negligent, grossly negligent, careless, reckless, willful, and wanton acts and conduct of Defendant Benton and of Samuel J. Brown, individually or through their employees and agents, in the following particulars to wit:

**AS TO THE DEFENDANT, SAMUEL J. BROWN**

- a. In failing to maintain a proper lookout;
- b. In failing to take evasive action so as to avoid striking Kruska's vehicle with the tractor-trailer rig;
- c. In failing to steer the tractor-railer rig so as to avoid colliding with Kruska's vehicle;
- d. In failing to maintain proper control over the tractor-trailer rig he was operating;
- e. In failing to apply the tractor-trailer rig's brakes, if any it had;
- f. In failing to properly maintain the brakes and braking system of the tractor-trailer;
- g. In operating the tractor-trailer in violation of mandatory State and Federal safety laws, statutes, regulations and ordinances so as to constitute negligence *per se*;
- h. In failing to use that degree of care and caution that a reasonably prudent person would have used under the same or similar circumstances;
- i. In driving said vehicle in utter disregard of the rights and safety of Elex R. Paul a/k/a Alex R. Paul and others lawfully using the public highway at the time and place aforesaid.
- j. In failing to use his horn;

- k. In driving too fast for conditions;
- l. In failing to slow his tractor trailer rig while approaching an intersection, in violation of State law, so as to constitute negligence *per se*;
- m. In disregarding a traffic signal;
- n. In running a red light;
- o. In failing to slow his tractor trailer rig while operating it on a downgrade;
- p. For exceeding the posted speed limit;
- q. For failing to complete a proper and thorough pre-trip inspection of his tractor-trailer rig; and
- r. In such other particulars as the evidence at trial may show.

**AS TO THE DEFENDANT, BENTON EXPRESS, INC.**

- a. In failing to properly train and adequately train and supervise its driver, Brown, so as to ensure that he could safely operate Defendant Benton Express, Inc.'s tractor-trailer rig on the highways of Greenville County, South Carolina;
- b. In failing to have in place adequate policies and procedures to monitor its drivers or, if such policies and procedures were in place, in failing to enforce them;
- c. In failing to have in place adequate policies and procedures to mandate compliance by its drivers with State and Federal statutes, laws and regulations regarding the operations of tractor-trailers or, if such policies and procedures were in place, in failing to enforce them;
- d. In failing to have in place an adequate safety program for the safety and protection of the motoring public;
- e. In negligently entrusting said tractor-trailer to the exclusive care, control, custody and use of Brown without properly training him to operate said tractor-trailer without adequately checking his qualifications to drive said tractor-trailer truck;
- f. In failing to properly maintain the commercial motor vehicle involved in the

wreck that is the subject of this litigation;

- g. In permitting a careless driver to operate said tractor-trailer truck;
- h. In continuing to employ Samuel J. Brown when it knew, or should have known, of his history of exceeding the speed limit while operating motor vehicles and in particular, while operating the aforementioned tractor trailer rig; and
- i. In failing to exercise the degree of care and caution which a reasonable, prudent entity would have exercised under the same or similar circumstances; and
- j. In such other particulars as the evidence at trial may show.

16. That as a direct and proximate cause of the aforementioned willful, wanton, reckless, careless, negligent and grossly negligent acts and conduct of Defendant Benton and of Brown, jointly and severally, as hereinabove more particularly set forth, Elex R. Paul a/k/a Alex R. Paul suffered serious, severe, painful injuries, that led to his death.

17. That Defendant Benton and Brown wrongfully caused the death of Plaintiff's decedent.

#### **FOR A SECOND CAUSE OF ACTION**

#### **(Defendants' negligence in causing Elex R. Paul's injuries and death - Survival Action for Conscious Pain and Suffering)**

18. Paragraphs one (1) through seventeen (17) are incorporated by reference as if repeated verbatim herein.

19. As a result of the aforementioned collision, Plaintiff's decedent was entrapped in the Mazda Miata and had to be extricated by emergency personnel.

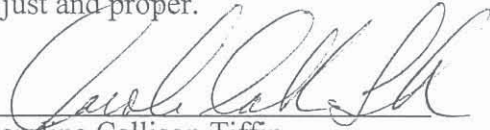
20. Plaintiff's decedent survived the collision, during which time he was conscious, alert, communicating with emergency personnel, and experiencing excruciating pain and suffering.

21. After being extricated from the Mazda Miata, Plaintiff's decedent succumbed to his injuries and died *en route* to Greenville Memorial Hospital, where he was pronounced dead by an attending physician.

22. As a result of the aforementioned damages, injuries and death, Plaintiff Latorre M.

Choice as the Personal Representative of the Estate of Elex R. Paul a/k/a Alex R. Paul is informed and believes that she is entitled to judgment in this matter in a sum to be determined by a jury.

WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and severally, for actual and punitive damages in a reasonable amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.



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April 17, 2011