

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 INTERROGATORIES TO
DEFENDANT C. J. MABARDY, INCORPORATED**

COMES NOW, Plaintiff NILANTHI MOTSENIGOS, by and through her counsel of record, and submits the following written Interrogatories to Defendant C. J. MABARDY, INCORPORATED, pursuant to the Massachusetts Rules of Civil Procedure.

DEFINITIONS

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

1. The term "**Document**" as used herein shall be given a very broad definition to include every type of paper, writing, data, record, graphic, drawing, photograph, audio recording and video recording. The term includes material in all forms, including printed, written, recorded, or other. The term includes all files, records and data contained in any computer system, computer component and/or computer storage (e.g., hard drive, disc, magnetic tape, backup system, cloud, etc.). This term

includes, but is not limited to, correspondence, reports, meeting minutes, memoranda, stenographic or handwritten notes, diaries, notebooks, account books, orders, invoices, statements, bills, checks, vouchers, purchase orders, studies, surveys, charts, maps, analyses, publications, books, pamphlets, periodicals, catalogues, brochures, schedules, circulars, bulletins, notices, instructions, manuals, journals, e-mails, e-mail attachments, data sheets, work sheets, statistical compilations, data processing cards, microfilms, computer records (including printouts, disks or other magnetic storage media), tapes, photographs (positive or negative prints), drawings, films, videotapes, hard drive recordings, pictures, and voice recordings. Plaintiff expressly intends for the term "Document" to include every copy of such writing, etc. when such copy contains any commentary or notation whatsoever that does not appear on the original and any attachments or exhibits to the requested document or any other documents referred to in the requested document or incorporated by reference.

2. "**Person**" means any natural person, corporation, partnership, proprietorship, association, organization, group of persons, or any governmental body or subdivision thereof.

3. (a) "**Identify**" with respect to any "**person**" or any reference to stating the "**identity**" of any "**person**" means to provide the name, home address, telephone number, business name, business address, and business telephone number of such person, and a description of each such person's connection with the events in question.

(b) "**Identify**" with respect to any "**document**" or any reference to stating the "**identification**" of any "**document**" means to provide the title and date of each such document, the name and address of the party or parties responsible for the preparation of each such document, the name and address of the party who requested or required the preparation of the document or on whose behalf it was prepared, the name and address of the recipient or recipients of each such

document, and the names and addresses of any and all persons who have custody or control of each such document, or copies thereof.

4. "**Subject Incident**" means the incident wherein Alexander Molsenigos was fatally injured which occurred on August 24, 2012, at or around 1:58 P.M., in Wellesley, Massachusetts.

5. "**You,**" "**Yuur,**" or "**C. J. MABARDY**" means Defendant C. J. MABARDY, INCORPORATED.

6. "**DANA MCCOOMB**" means Defendant DANA MCCOOMB.

7. "**Similar**" shall have the meaning given in the American Heritage Dictionary, which is "showing some resemblance; related in appearance or nature; alike but not identical." As used here, the word "similar" shall not be limited as if modified by the word "substantially" and shall not mean "the same". If you limit the information provided because you use another interpretation of the word "similar," please state the interpretation you are using and reveal the nature of the information withheld.

8. The terms "**and**" as well as "**or**" shall be each construed conjunctively and disjunctively as necessary to bring within the scope of each interrogatory and request for documents all information and documents that might otherwise be construed to be outside its scope. The term "**and/or**" shall be construed likewise.

9. Whenever necessary to bring within the scope of an interrogatory or request for production of documents any information or document that might otherwise be construed to be outside its scope:

(i) the use of a verb in any tense shall be construed as the use of the verb in all other tenses; (ii) the use of the singular shall be construed as the use of the plural and vice versa; and (iii) "**any**" includes "all," and "**all**" includes "any."

10. With regard to any term used herein that is deemed by the responding party as being

ambiguous or vague, a term shall be construed in its broadest sense to encompass all reasonable definitions of that term.

INTERROGATORIES

1. Identify the following people: (a) The Safety Director/Chief Safety Officer for C. J. MABARDY on the date of the Subject Incident and now; (b) The person(s) primarily responsible for compliance with state and federal safety regulations at C. J. MABARDY on the date of the Subject Incident and now; (c) The person(s) responsible for training DANA MCCOOMB; (d) DANA MCCOOMB's primary supervisor on the date of the Subject Incident; and (e) each person who participated in and/or was consulted with in responding to Plaintiff's Interrogatories, Requests for Production of Documents, and Requests of Admissions.
2. For each claim (formal or informal) and lawsuit wherein it is/was suggested or alleged that any person was injured or killed as a result of the actions of a driver who was driving on behalf of C. J. MABARDY in the past three years, provide the style of the case (or name of parties, jurisdiction and case number), and describe briefly the circumstances of each suit/claim and the disposition.
3. Identify and explain each communication of any kind between any federal and/or state agency and C. J. MABARDY that involved compliance (or noncompliance) with state and/or federal laws and/or regulations in the past 5 years. This would include, but is not limited to, all letters, interventions, complaints, warnings, citations, and safety ratings.
4. With respect to the tractor operated by DANA MCCOOMB at the time of the Subject Incident, provide the following information:

- (a) Identify the registered owner, lessor (if any) and lessee (if any) on the date of the Subject Incident and presently.
 - (b) Explain the relationship between C.J MABARDY and the Lessor, Lessee and Owner of the tractor.
 - (c) Identify all systems and devices in/on the tractor that have the capability of recording and/or transmitting any data about the operation of the tractor (including without limitation Engine Control Module, Event Data Recorder, Airbag Control Module, Brake Control Module, Electronic On-Board Recorder, VORAD, Qualcomm, Fleetmatics, Peoplencat, Xata, any telematics system, any GPS system, any trip monitoring or recording system, any electronic log system, any onboard cameras or video, any system that uses a tachograph or transponder, etc.), state whether or not data for the time period surrounding the Subject Incident has been preserved and/or downloaded, and if so, when and by whom and the current custodian of the data.
 - (d) Identify all systems and devices of any kind in or on the tractor that allowed for communication between the driver and any other person or entity, state whether the data for the time period surrounding the Subject Incident has been preserved, and identify the person who has custody of the data and of the system from which the data was acquired.
 - (e) Identify all maintenance and repairs performed for the time period from 12 months before the Subject Incident to present.
5. With respect to the trailer that was being hauled by DANA MCCOOMB at the time of the Subject Incident, provide the following information:

- (a) Identify the registered owner, lessor (if any) and lessee (if any) on the date of the Subject Incident and presently.
 - (b) Explain the relationship between C.J.MABARDY and the Lessor, Lessee and Owner of the tractor.
 - (c) Identify all maintenance and repairs performed for the time period from 12 months before the Subject Incident to present.
6. Explain to the best of your ability everything that DANA MCCOOMB did from the time he arrived at work until the time he left work on the date of the Subject Incident and the routes he was supposed to follow. Provide times and locations for each action and identify every document (as that term is defined above) and every person who can verify each action. This information should cover all inspections, loading, unloading, and all other stops for all purposes.
7. Explain how you monitored and verified the accuracy of DANA MCCOOMB's Hours of Service (HOS) during the six months preceding the Subject Incident and identify all logs, time sheets, support materials, audits, and other documents related to such monitoring.
8. For the 8 days leading up to the Subject Incident, provide the following information regarding DANA MCCOOMB:
- (a) Identify all time when DAN MCCOOMB was driving, on duty not driving, sleeper berth and off duty as those terms are defined by the FMCSR;
 - (b) Identify all on-duty not driving hours (location and activities)
 - (c) For each stop, provide time, location and reason
 - (d) Identify when and where DANA MCCOOMB ate meals
 - (e) Identify when and where DANA MCCOOMB slept

- (a) Identify when and where and in what dosages DANA MCCOOMB ingested any medication (prescription and over the counter).
9. If C. J. MABARDY performs hours of service log audits on drivers,
- (a) Explain what is entailed in the auditing process;
 - (b) Identify all documents and data used in the process;
 - (c) Identify who performs the audits (in-house or outsourced);
 - (d) Identify when, if ever, DANA MCCOOMB's logs were audited; and
 - (e) Identify all Hours of Service violations of which you are aware for DANA MCCOOMB while he was working with your company.
10. Explain the relationship between C. J. MABARDY and DANA MCCOOMB at the time of the Subject Incident (e.g., leased driver, company driver, etc.), explain if that relationship has ever changed from the date he first performed work for C.J MABARDY to present and explain how he was paid on the date of the Subject Incident (by hour, by load, by mile, salary or other).
11. Explain all steps C. J. MABARDY undertook to qualify and/or re-qualify DANA MCCOOMB as a commercial driver in accord with the Federal Motor Carrier Safety Regulations and state trucking safety regulations. .
12. To the best of your knowledge, did DANA MCCOOMB have any health issues that could have affected his ability to drive in any way in the 72 hours leading up to the Subject Incident? If so, explain.

13. Identify and describe all formal and informal disciplinary and/or counseling actions, suspensions, demotions and/or change of job duties or status undertaken by C. J. MABARDY regarding DANA MCCOOMB at any time.
14. Describe in detail all training and education (including on the job training) provided by or on behalf of C. J. MABARDY to DANA MCCOOMB at any time and in any way related to the operation of a commercial motor vehicle. Identify all courses and all training materials.
15. Identify all traffic violations of which you are aware committed by DANA MCCOOMB in the ten years preceding the Subject Incident and state when and in what manner you came to be aware of such traffic violations.
16. If DANA MCCOOMB has ever been arrested or charged with any crime to your knowledge, for each arrest or charge identify the charge, date, jurisdiction, disposition and when and in what manner you became aware of such arrest or charge.
17. For each motor vehicle collision/accident involving DANA MCCOOMB of which you are aware, provide the collision/accident date, location, jurisdiction, names of other parties involved, a brief description of what happened and the date on which you became aware of the motor vehicle collision/accident.
18. If DANA MCCOOMB had ever been disqualified from driving a commercial motor vehicle while in your employ, please describe when, under what circumstances and when you became aware of said disqualification.
19. Identify each drug and/or alcohol test C. J. MABARDY ever subjected DANA MCCOOMB to during his employment and provide reason for and the results of each such test.


20. If you maintain that the Federal Motor Carrier Safety Regulations did not apply to DANA MCCOOMB at the time of the Subject Incident, explain the basis for your contention and identify all facts, witnesses, and documents that support your contention.
21. Identify all C. J. MABARDY policies, procedures, rules, guidelines, directives, manuals, handbooks and instructions that were in effect for DANA MCCOOMB at the time of the Subject Incident and state whether DANA MCCOOMB violated or breached any of these policies, procedures, rules, guidelines, directives, manuals, handbooks or instructions on the day of the Subject Incident, including but not limited to those pertaining to safety, the safe operation of his vehicle, vehicle inspection and reporting, by identifying the violation or breach.
22. If you contend that there was **never** any contact between the trailer that DANA MCCOOMB was hauling and ALEX MOTSENIGOS (or his bicycle) on the date of the Subject Incident, explain why and identify all documents, evidence and persons who you believe supports your position.
23. If you have any evidence that the tractor or the trailer DANA MCCOOMB was driving came in contact with ALEX MOTSENIGOS (or his bicycle) on the date of the Subject Incident, identify the evidence and describe how it demonstrates or shows contact with ALEX MOTSENIGOS (or his bicycle).
24. Explain your understanding of how and why the Subject Incident occurred.
25. Identify all person(s) who you to your knowledge have or may have any relevant information regarding: the Subject Incident; the facts leading up to the Subject Incident; the investigation of the Subject Incident; any party to this action; any vehicles involved in the Subject Incident; and/or any claims or defenses raised in this action. The purpose of

this Interrogatory is to identify all witnesses whom C. J. MABARDY believes may have relevant testimony of any kind in connection with this case.

26. Identify all persons who to your knowledge have given a statement **in any form** (written, oral, recorded or otherwise) in connection with this case. For each person identified, provide the date and time of the statement, identify to whom the statement was made and who was present when the statement was made, identify whether the statement was written, oral, recorded, and/or transcribed, and identify all persons presently having custody of the statement.
27. If you maintain that any non-party person, entity, thing or circumstance caused or contributed to causing the Subject Incident, and/or any of the damages alleged in the Complaint, identify each such person, entity, thing or circumstance and describe the basis for responsibility.
28. If you maintain that ALEXANDER MOTSENIGOS has any responsibility of any kind for causing the Subject Incident, and/or for causing any of the damages alleged in the Plaintiff's Complaint, describe in detail the basis for this responsibility and identify all person(s) who have any knowledge regarding this issue.

29. If C. J. MABARDY has performed any review (e.g., accident review board, preventability determination) of the Subject Incident to determine preventability and/or fault, identify all persons involved in the review, the dates of the review and the conclusions that were reached.
30. Identify each person C. J. MABARDY expects to call as an expert witness at trial and for each expert identified: (a) summarize each opinion the expert holds in regards to this case; (b) identify the factual basis for each such opinion; (c) identify all documents and evidence of any kind provided to the expert for review; and (d) identify all documents and evidence of any kind that support each opinion.
31. If C.J MABARDY has been the subject of any intervention by the Federal Motor Carrier Safety Administration or the Massachusetts State Police Commercial Enforcement Section, identify the date and substance of each intervention.

On behalf of the Plaintiff,



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Dated: 5/13/2013