

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, ss. SUPERIOR COURT

ANDREW J. WEIGL, Personal Representative of the
Estate of Christopher J. Weigl

Plaintiff,

v.

ROSS EXPRESS, INC., and JOHN A. BROTHERS,

Defendants.

CIVIL ACTION
NO.

13-3453 A

COMPLAINT AND JURY CLAIM

THE PARTIES

1. The plaintiff, Andrew J. Weigl, resides at 7 Wentworth Drive, Worcester County, Southborough, Massachusetts, is and was a Massachusetts resident at all times material to this action, and is the duly appointed Personal Representative of the Estate of his son, the late Christopher J. Weigl.
2. The defendant, Ross Express, Inc., is a foreign corporation, with its principal office located at 195 North Main Street, Boscawen, New Hampshire, registered to do business in the State of Massachusetts, with its registered agent as Dennis M. Spurling, Esq., 21 Wingate Street, Haverhill, Massachusetts. The defendant, Ross Express, Inc., does business in the Commonwealth of Massachusetts, and has a trucking terminal located at 39 Gilmore Drive, Worcester County, Sutton, Massachusetts.
3. The defendant, John A. Brothers resides at 479 Douglas Street, Worcester County, Uxbridge, Massachusetts.
4. The incident which is the subject of this Complaint occurred in Suffolk County. Therefore, Suffolk County is an appropriate venue for this action.

FACTUAL BACKGROUND

5. The defendant, Ross Express, Inc. negligently and/or in a grossly negligent manner, hired, trained, supervised and/or retained John A. Brothers, in assigning him to make a delivery to a section of Boston, Massachusetts on Commonwealth Avenue, which is known to have particularly heavy bicycle, pedestrian, and motor vehicle traffic. The defendant

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SUFFOLK SUPERIOR COURT

knew, or should have known, that the unsafe operation of a tractor-trailer truck in such a busy area presented an unreasonable hazard to members of the public such as bicyclists, pedestrians, and/or motorists on Commonwealth Avenue, such as the plaintiff's decedent, Christopher J. Weigl.

6. At all relevant times, the defendant John A. Brothers was an employee, operating a tractor-trailer in the scope of his employment with Ross Express, Inc. Therefore, he was in the course of his employment at the time of this accident, and the defendant, Ross Express, Inc. is liable based upon principles of vicarious liability for the actions of its agents or employees.
7. At all relevant times the defendant, Ross Express, Inc., was leasing the aforementioned tractor-trailer for use in conducting its regular business of making deliveries to various locations in the Commonwealth of Massachusetts.
8. On or about December 6, 2012, the defendant, John A. Brothers was an employee of the defendant, Ross Express, Inc., working in the Commonwealth of Massachusetts as an employee of the defendant, Ross Express, Inc., at his employer's request and direction.
9. On or about December 6, 2012, the plaintiff's decedent, Christopher J. Weigl, was a bicyclist and a member of the general public traveling in the bike lane on Commonwealth Avenue in Boston, Massachusetts, acting at all times without comparative negligence and in a reasonable and prudent manner and exercising due care for his safety under the circumstances.
10. On or about December 6, 2012, the defendant, John A. Brothers was negligent and/or grossly negligent in his operation of said tractor-trailer while traveling eastbound on Commonwealth Avenue and attempting to make a right turn onto St. Paul Street from the left lane of Commonwealth Avenue so as to cause the tractor-trailer to collide with and kill plaintiff's decedent, Christopher J. Weigl.
11. In addition to any other causes, the negligence and/or gross negligence of the defendants caused the death of plaintiff's decedent, Christopher J. Weigl.
12. Christopher J. Weigl died on or about December 6, 2012, and left surviving him next of kin.
13. As a result of the negligence and/or gross negligence of the defendants as aforesaid, Christopher J. Weigl died, having previously suffered serious harm, including but not limited to severe personal injuries, pain and suffering, and he and his next of kin were caused to incur significant economic harm including, but not limited to, medical expenses, loss of future earning capacity and funeral and burial expenses.

14. As a result of the negligence and/or gross negligence of the defendants as aforesaid, Christopher J. Weigl's next of kin have suffered and will suffer loss of his protection, care, services, assistance, comfort, society, consortium, companionship, comfort, guidance, advice, and future financial support.

CAUSES OF ACTION

First Cause of Action

This is an action by the plaintiff, Andrew J. Weigl, as Personal Representative of the Estate of Christopher J. Weigl, against the defendant, Ross Express, Inc., for negligence resulting in personal injuries suffered by Christopher J. Weigl prior to his death, including, but not limited to conscious pain and suffering, medical expenses and consequential expenses.

Second Cause of Action

This is an action by the plaintiff, Andrew J. Weigl, as Personal Representative of the Estate of Christopher J. Weigl, against the defendant, Ross Express, Inc., for negligence resulting in the death of Christopher J. Weigl, for the use and benefit of the next of kin of said decedent, in accordance with the provisions of Massachusetts General Laws, Chapter 229.

Third Cause of Action

This is an action by the plaintiff, Andrew J. Weigl, as Personal Representative of the Estate of Christopher J. Weigl, against the defendant, Ross Express, Inc., for punitive damages in causing the death of Christopher J. Weigl by its gross negligence in accordance with the provisions of Massachusetts General Laws, Chapter 229.

Fourth Cause of Action

This is an action by the plaintiff, Andrew J. Weigl, as Personal Representative of the Estate of Christopher J. Weigl, against the defendant, John A. Brothers, for negligence resulting in personal injuries suffered by Christopher J. Weigl prior to his death, including, but not limited to conscious pain and suffering, medical expenses and consequential expenses.

Fifth Cause of Action

This is an action by the plaintiff, Andrew J. Weigl, as Personal Representative of the Estate of Christopher J. Weigl, against the defendant, John A. Brothers, for negligence resulting in the death of Christopher J. Weigl, for the use and benefit of the next of kin of said decedent, in accordance with the provisions of Massachusetts General Laws, Chapter 229.

Sixth Cause of Action

This is an action by the plaintiff, Andrew J. Weigl, as Personal Representative of the Estate of Christopher J. Weigl, against the defendant, John A. Brothers, for punitive damages in causing the death of Christopher J. Weigl by his gross negligence in accordance with the provisions of Massachusetts General Laws, Chapter 229.

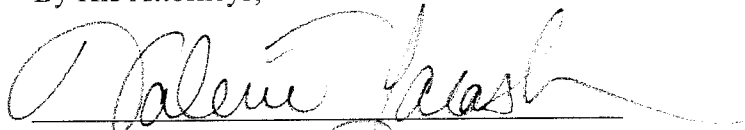
DEMANDS FOR RELIEF

- A. The plaintiff, Andrew J. Weigl, as Personal Representative of the Estate of Christopher J. Weigl, demands judgment against the defendant, Ross Express, Inc., in an amount that will fully and fairly compensate the estate and the next of kin, together with interest and costs as to the First and Second Causes of Action.
- B. The plaintiff, Andrew J. Weigl, as Personal Representative of the Estate of Christopher J. Weigl, demands judgment against the defendant, Ross Express, Inc., for punitive damages as to the Third Cause of Action.
- C. The plaintiff, Andrew J. Weigl, as Personal Representative of the Estate of Christopher J. Weigl, demands judgment against the defendant, John A. Brothers, in an amount that will fully and fairly compensate the estate and the next of kin, together with interest and costs as to the Fourth and Fifth Causes of Action.
- D. The plaintiff, Andrew J. Weigl, as Personal Representative of the Estate of Christopher J. Weigl, demands judgment against the defendant, John A. Brothers, for punitive damages as to the Sixth Cause of Action.

JURY CLAIM

THE PLAINTIFF HEREBY MAKES CLAIM FOR A TRIAL BY JURY OF ALL CLAIMS ASSERTED OR HEREAFTER ASSERTED IN THE COMPLAINT, AND OF ALL DEFENSES ASSERTED OR HEREAFTER ASSERTED BY ANY DEFENDANT.

The Plaintiff,
By His Attorneys,



Valerie A. Yarashus - B.B.O. No. 556673

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Date: September 27, 2013