

The Plaintiffs, by and through counsel, allege as follows:

FIRST CAUSE OF ACTION

For the first claim of relief against the Defendants, the Plaintiffs state:

1. The Plaintiffs reside in Bloomdale, Wood County, Ohio.
2. At all times relevant herein, Plaintiff Robert Clark was an employee of Defendant Envirosafe Services of Ohio, Inc.
3. Defendant Envirosafe Services of Ohio, Inc. (hereafter “Envirosafe”) is a business entity that is incorporated in Ohio and does business in Oregon, Lucas County, Ohio.
4. On or about July 26, 2008, Plaintiff Robert Clark was working as an employee for Envirosafe at its worksite of 876 Otter Creek Road, Oregon, Lucas County, Ohio.
5. On or about July 26, 2008, Donald Steyer was vice-president of operations and/or a supervisor for Envirosafe at all times relevant herein.
6. Envirosafe is responsible for the tortious conduct of Donald Steyer through the doctrine of *respondeat superior*. The actions and knowledge of Donald Steyer are imputed to Envirosafe.
7. On or about July 26, 2008, Envirosafe rented a Galion Roll-O-Static roller (hereafter “Galion roller”) for use at its worksite.
8. The Galion roller was dissimilar to the roller Envirosafe owned and normally supplied for the use of Plaintiff Robert Clark.
9. Donald Steyer instructed Robert Clark to use the Galion roller to grade a slope of a hill at the worksite. The work required driving the Galion roller on the incline of the hill.

10. While Robert Clark was operating the Galion roller on the incline of the hill as instructed, the engine of the machine stalled, causing it to begin rolling down the hill. Unable to stop the roller, Mr. Clark jumped off the machine and sustained serious permanent personal injuries.
11. Neither Donald Steyer nor Envirosafe provided Robert Clark with an operator's manual for the Galion roller before he was instructed to operate it.
12. Neither Donald Steyer nor Envirosafe provided Robert Clark with any training about how to operate the Galion roller.
13. The Galion roller would not stop on an incline in the event of a dead or stalled engine if the forward/reverse lever of the roller was placed in the center position.
14. Neither Donald Steyer nor any other Envirosafe employee informed Robert Clark that the Galion roller would not stop on an incline in the event of a dead or stalled engine if the forward/reverse lever of the roller was placed in the center position.
15. Neither Donald Steyer nor any other Envirosafe employee informed Robert Clark that in the event of a stalled engine the forward/reverse level would not effectively stop the Galion roller on an incline.
16. Neither Donald Steyer nor any other Envirosafe employee informed Robert Clark that in the event the Galion roller stalled, he should engage the parking brake and/or emergency brake to stop it from rolling down an incline.
17. Donald Steyer and Envirosafe had knowledge that requiring Robert Clark to use the Galion roller on the hill at the worksite constituted the existence of a dangerous process, procedure, instrumentality, or condition within its business operation on or about July 26, 2008.

18. Donald Steyer and Envirosafe had knowledge that if Robert Clark was subjected by his employment to such dangerous process, procedure, instrumentality, or condition, then harm to him would be a substantial certainty.
19. Despite the knowledge that subjecting Robert Clark to such dangerous process, procedure, instrumentality, or condition would be substantially certain to cause him harm, Donald Steyer and Envirosafe acted to require him to perform the dangerous activities on or about July 26, 2008, at the worksite.
20. As a direct and proximate cause of Donald Steyer and Envirosafe requiring Robert Clark to be subjected to such dangerous process, procedure, instrumentality, or condition, Robert Clark sustained serious permanent personal injuries. More specifically, when Robert Clark jumped from the Galion roller as it started to roll down the hill, the resulting impact caused him to sustain serious permanent personal injuries to his head, ankle, leg, and entire body. Robert Clark was required to undergo hospital and medical care; incurred hospital and medical care costs; incurred great pain, suffering, severe mental anguish, and emotional distress. Further, Robert Clark believes that these injuries are permanent in nature and will require future medical care; future medical care costs and he will continue to endure great pain, suffering, mental anguish, and emotional distress. Additionally, Robert Clark suffered a loss of wages.

SECOND CAUSE OF ACTION

For the second claim of relief against the Defendant, the Plaintiffs state:

21. The Plaintiffs incorporate by reference all of the above paragraphs as though fully restated herein.

22. Pursuant to R.C. 2745.01, Envirosafe required Robert Clark to use the Galion roller on the incline of a hill with the intent to injure him and/or with the belief that the injury was substantially certain to occur.
23. As a direct and proximate cause of Envirosafe's tortious conduct, Robert Clark sustained serious permanent personal injuries to his head, ankle, leg, and entire body. Robert Clark was required to undergo hospital and medical care; incurred hospital and medical care costs; incurred great pain, suffering, severe mental anguish, and emotional distress. Further, Robert Clark believes that these injuries are permanent in nature and will require future medical care; future medical care costs and he will continue to endure great pain, suffering, mental anguish, and emotional distress. Additionally, Robert Clark suffered a loss of wages.

THIRD CAUSE OF ACTION

For the third claim of relief against the Defendant, the Plaintiffs state:

24. The Plaintiffs incorporate by reference all of the above paragraphs as though fully restated herein.
25. Plaintiff Dawn Clark is the lawful spouse of Plaintiff Robert Clark. Plaintiff Dawn Clark states that as a result of the tortious conduct of the Defendants, she has been deprived of the love, affection, services, consortium, and society of her spouse, Plaintiff Robert Clark; and that the enjoyment and quality of life and her ability to carry on the normal activities of her daily life with her spouse have been impaired.

FOURTH CAUSE OF ACTION

For the fourth claim of relief against the Defendant, the Plaintiffs state:

1. Plaintiffs incorporate by reference the above paragraphs as if fully restated herein.
2. R.C. 2745.01 addresses an employer's liability for intentional tort.

3. R.C. 2745.01 represents an invalid exercise of legislative authority in violation of Ohio Const. Art. II, § 35.
4. Legislation governing employer intentional torts within the employment relationship cannot withstand constitutional scrutiny as such intentional tortuous conduct always takes place outside that relationship.
5. Therefore, R.C. 2745.01 violates the Ohio Constitution.

WHEREFORE, Plaintiffs pray that judgment be entered against the Defendant as follows:

1. On the FIRST CAUSE of action a judgment against Defendants in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) together with interest, costs and reasonable attorney fees associated herewith.
2. On the SECOND cause of action a judgment against Defendants in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) together with interest, costs and reasonable attorney fees associated herewith.
3. On the THIRD cause of action a judgment against Defendants in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) together with interest, costs and reasonable attorney fees associated herewith.
4. On the FOURTH cause of action, a declaratory judgment that R.C. 2745.01 violates the Ohio Constitution.


Respectfully submitted,



Charles E. Boyk
Attorney for Plaintiffs

JURY DEMAND

The Plaintiffs demand a trial by jury on all issues triable by right.

By  _____
Charles E. Boyk
Attorney for Plaintiff

TO DEFENDANT ENVIROSAFE SERVICES OF OHIO, INC. : Plaintiffs hereby request that the Defendant Envirosafe Services of Ohio, Inc., pursuant to Rules 26, 33 and 34 of the Ohio Rules of Civil Procedure, respond to the following Requests for Production of Documents and Interrogatories within twenty-eight (28) days of the date of service hereof.

Said Defendant is required to produce said documents and tangible evidence hereinafter described by mailing same to Plaintiffs' counsel of record: Charles E. Boyk, 405 Madison Avenue, Suite 1200, Toledo, Ohio 43604 within twenty-eight (28) days of the date of service. Pursuant to Rule 26(e) of the Ohio Rules of Civil Procedure, Plaintiff requests that the Defendants, reasonably supplement their responses after date of return or before the time of trial.

INSTRUCTIONS FOR RESPONDING

- A. In answering the Request for Production, you are required not only to furnish such documents and tangible evidence as you possess personally, but also documents and tangible evidence which are in the possession of your relative or other who are holding those documents or that tangible evidence on your behalf, your attorneys, your agents, or your employees.

- B. When after a reasonable and thorough investigation using due diligence, you are unable to provide a document because of lack of availability, identify said document and specify in full and complete detail the reason the document is not available to you and what has been done to locate and obtain such document.
- C. Where the Request for Production calls for the production of a document as to which you claim a privilege as a ground for non-production, please set forth with respect to the document, in addition to any other information requested, its date, author, addressee if any, title, type of tangible thing (letter, memorandum, telegram, chart, report, tape recording), subject matter (without revealing the information as to which privilege is claimed), and with sufficient specificity to permit the Court to make a full determination whether the claim of privilege is valid, each and every fact or basis on which you claim such privilege.
- D. If any document called for by this discovery is not available or accessible, or does not provide information in the full detail requested, this discovery shall be deemed to call for the vest documents available on the subject matter.
- E. This Request for Production and answers to interrogatories is deemed to be continuing and to required the furnishing of additional documents and seasonable supplementation of responses whenever additional, updated or revised documents or information become available to you.

DEFINITION OF TERMS USED IN THESE INTERROGATORIES

- A. As used herein, the term "document" means any writing or any other tangible thing of any kind and description, however produced or reproduced, whether draft or

final, original or reproduction, in your actual or constructive possession, including, but not limited: letters, correspondence, resumes, memoranda, notes, films, transcripts, contracts, agreements, licenses, memoranda of telephone or personal conversations, microfilm, microfiche, telegrams, books, magazines, newspapers, brochures, press releases, advertisements, periodicals, bulletins, circulars, pamphlets, statements, notices, reports, rules, regulations, directive, teletype, or telefax messages, communications, minutes of records of meeting, expression of or statements of policy, lists of persons attending meetings or conferences, reports and/or summaries of investigations, opinions or reports of consultations, appraisals, reports or summaries of negotiations, interoffice communications, financial statements, ledgers, books of account, proposals, prospectuses, offers, orders, receipts, working papers, desk calendars, appointment books, diaries, time sheets, logs, movies, tapes for visual or audio reproduction, recordings, or materials similar to any of the foregoing, however, denominated, and including drawings, graphs, charts, photographs, phone-records, data-processing paper results, data print-outs, data computations (both in existence and in memory components), and other data compilations from which information can be obtained and translated, if necessary, by you through devices into reasonably usual form. The term "document" also includes any copies of each document if the copies are in any way whatsoever not identical copies of the original, by reason of additional writing or notations or otherwise.

- B. Person includes natural persons, corporations, trusts, partnerships, joint venture, associations and any other business or legal entity.

C. Identify means the following:

1. If referring to a person it means a statement as to:

- a. The full name, business affiliation, and business title of such person;
- b. The last known business and home address of such persons;
- c. The last known business and home telephone number of such person; and
- d. If such person is not a natural person, state:
 - i. Its name;
 - ii. Its last known business address;
 - iii. Its character, e.g.: corporation, partnership;
 - iv. The name(s) and last known residence address(es) of its officers, directors, partners, and/or principals.

2. If referring to a writing, it means a statement as to:

- a. The nature of such writing and the date it bears;
- b. The title or designation of such writing;
- c. The date or dates of preparation of such writing;
- d. The name of the person or persons who prepared such writing;
- e. The name of the person or person who executed such writing;
- f. The name of the person or persons to whom such writing is addressed;
- g. Any file number used in connection with such writing;

- h. The portion of such writing, described by page and line number, which bears upon the subject inquired of this interrogatory;
- i. The present location of such writing and each copy thereof;
- j. The name and address of the person(s) presently possessing or having custody or control of such writing;
- k. A description of the means and circumstances by which you came into possession of such writing;
- l. The date upon which you came into possession of such writing;
- m. A description of the means and circumstances by which you first became aware of such writing;
- n. The date upon which you first became aware of such writing; and
- o. A brief summary of the contents of such writing; in lieu thereof, a true and complete copy of the writing may be appended to your answers to these interrogatories.

3. If referring to an oral communication, it means a statement as to:

- a. The nature of such oral communication and the date it occurred;
- b. Whether such oral communication was made by person or telephone;
- c. The name of the person(s) who participated in or had knowledge of such oral communication;
- d. The geographical location of each such person at the time of such communication;

- e. The precise words used in the communication by each person present when such communication took place, or if the precise words cannot be stated, what was said by each person in words of substance or effect, or if this cannot be stated, a general description of the subject matter of the communication;
- f. The number of minutes or hours during which such communication occurred;
- g. A description of the means and circumstances by which you became aware of such oral communication; and
- h. The date upon which you first became aware of such oral communication.

REQUEST FOR PRODUCTION NO:

1. A copy of any and all applicable insurance policies of any kind including the face sheet that list specific policy limits that were in effect at the time of the incident alleged in this complaint.

REQUEST FOR PRODUCTION NO:

2. Copies of any and all witness statements obtained by the defendant or any of its agents concerning the subject matter of this complaint.

REQUEST FOR PRODUCTION NO:

3. A list of names, addresses, and phone numbers of any witnesses that may have seen the incident that is the subject matter of this complaint.

REQUEST FOR PRODUCTION NO:

4. A copy of all reports and documents, in whatever medium they may exist, maintained by the defendant or its agents relative to the accident in this litigation, including any and all internal accident investigation documents and e-mails exchanged about the incident.

REQUEST FOR PRODUCTION NO:

5. A list of names, addresses and phone numbers of all the employees that were working in and around the area where the plaintiff was injured.

REQUEST FOR PRODUCTION NO:

6. A copy of any digital or video recordings that might have captured the incident that is the subject matter of this complaint.

REQUEST FOR PRODUCTION NO:

7. A copy of all written company safety policies, safety procedures, and safety programs.

REQUEST FOR PRODUCTION NO:

8. A copy of the defendant's complete personnel file for Robert Clark.

REQUEST FOR PRODUCTION NO:

9. A copy of the defendant's complete personnel file for Donald Steyer.

REQUEST FOR PRODUCTION NO:

10. A copy of any and all documents related to the rental of the Galion Roll-O-Static roller from Peters Used Equipment, Inc. on or about July 26, 2008.

REQUEST FOR PRODUCTION NO:

11. A copy of any and all documents, regardless of the medium in which they exist, related to the project to which Robert Clark had been assigned on or about July 26, 2008.

REQUEST FOR PRODUCTION NO:

22. All photos or videos taken of the incident site taken as part of the investigation following Robert Clark's injuries on or about July 26, 2008.

INTERROGATORY NO:

1. State your full name, birth date, address, and Social Security number, business address and occupation or title and if the defendant is a corporation the office you hold with the defendant as well as the name and address of the statutory agent.

Answer:

INTERROGATORY NO:

2. If it is the defendant's contention that the plaintiff's injuries were caused by some person, firm or corporation other than the defendant or any agent or employee of the defendant, please identify each such person, firm corporation fully, giving name, occupation, address, and a complete description of the way in which each such person, firm or corporation caused or contributed to the plaintiff's injuries.

Answer:

INTERROGATORY NO:

3. Please state the identity and location of each person other than your attorney who has knowledge of discoverable matters relating in any way to the claim asserted by the plaintiff's complaint.

Answer:

INTERROGATORY NO:

4. Please completely identify each person the defendant expects to call as a witness or expert witness at trial, and state for each such person: the name, address and occupation, the subject matter the person is expected to testify about, the substance of all facts and opinions to which the person is expected to testify, a summary of the grounds for each such opinion, experiences in the area of similar or comparable products and a list of books, treatises, articles and other works which the person regards as authoritative on the subject on which he/she is expected to testify.

Answer:

INTERROGATORY NO:

5. State the name, address, and phone number of each person who witnessed or claims to have witnessed the subject incident.

Answer:

INTERROGATORY NO:

6. State whether you have any statements from any witnesses or parties other than yourself concerning the subject incident.

Answer:

INTERROGATORY NO:

7. If the answer to number 6 is affirmative, state the name and address of each such party or witness and the date of such statement.

Answer:

INTERROGATORY NO:

8. Please identify by name the person or persons Envirosafe employed to supervise the worksite to which Robert Clark was assigned on or about July 26, 2008.

Answer:

INTERROGATORY NO:

9. Please state whether Robert Clark received any training on the use and operation of the Galion Roll-O-Static roller on or prior to July 26, 2008. If answered in the affirmative, please name the person who provided the training, the trainer's job title, the dates or date on which the training was provided, and the location where the training took place.

Answer:

INTERROGATORY NO:

10. Please state the degree of incline of the hill on which Robert Clark was operating the Galion Roll-O-Static roller on July 26, 2008, at the time of the subject incident.

Answer:

INTERROGATORY NO:

11. Please state the height of the hill on which Robert Clark was operating the Galion Roll-O-Static roller on July 26, 2008, at the time of the subject incident.

Answer:

INTERROGATORY NO:

12. Please identify the employee and/or representative of Peters Used Equipment, Inc., that delivered the Galion Roll-O-Static roller to Envirosafe on or about July 26, 2008. For each name stated, please list the address and phone number for that person.

Answer:

INTERROGATORY NO:

13. Please identify the employee and/or representative of Peters Used Equipment, Inc., with whom Envirosafe's employees and/or agents arranged to have the Galion Roll-O-Static roller delivered to Envirosafe for use on July 26, 2008. For each name stated, please list the address and phone number for that person.

Respectfully submitted,



Charles E. Boyk
Attorney for the Plaintiffs