

IN THE COMMON PLEAS COURT OF FULTON COUNTY, OHIO

TOBY ROSS
691 S. Elliston Trowbridge Rd
Elmore, OH. 43416

Case No.:

and

Judge

TAMRA ROSS
691 S. Elliston Trowbridge Rd
Elmore, OH 43416

**COMPLAINT WITH JURY DEMAND AND
ATTACHED DISCOVERY REQUESTS**

Plaintiffs,

Charles E. Boyk (0000494)
Michael A. Bruno (0033780)
Dale R. Emch (0080004)
Charles E. Boyk Law Offices, LLC
420 Madison STE 1200
Toledo, Ohio 43604
Telephone: (419) 241-1395
Facsimile: (419) 241-8731
email: boykdiscovery@gmail.com

v.

IBRAHIM BOATENG
324 Grove Street
Worcester, MA 01605

Attorney for Plaintiffs

and

DELLING TRUCKING, INC.
C /O– Ibrahim Boateng, statutory agent
237 Chandler Street
Worcester, MA 01602

Defendants.

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 are residents of Elmore, Ottawa County, Ohio.
2. Defendant IBRAHIM BOATENG is a resident of Worcester, Massachusetts, who was the driver of a vehicle that caused injury to the Plaintiffs in Fulton County, Ohio.
3. Defendant DELLING TRUCKING, INC. with its principal place of business in Worcester, Massachusetts was the owner of the truck driven by defendant IBRAHIM BOATENG when he caused an accident in Fulton County, Ohio.
4. On or about September 15, 2008, Plaintiff TOBY ROSS was driving in his employer's truck on US20A approaching CR 22 in Fulton County, Ohio, when Defendant IBRAHIM BOATENG traveling northbound on CR 22 attempted to make a left turn onto the westbound lane of US20A. In the defendant's attempt he did so by pulling in front of the Plaintiff's truck. Plaintiff then struck the side of defendant's truck, and then came to rest in field on the southeast corner of the intersection. The Ohio State Highway Patrol were called to the scene and cited, defendant IBRAHIM BOATENG for a turning violation at an intersection.
5. Defendant IBRAHIM BOATENG owed a duty of care to TOBY ROSS not to operate a vehicle in such a manner that may cause injury to him.
6. Defendant IBRAHIM BOATENG breached that duty of care by operating a vehicle in a dangerous and negligent way so as to injure the Plaintiff, TOBY ROSS.

7. As a direct and proximate result of Defendant IBRAHIM BOATENG's negligence, Plaintiff TOBY ROSS sustained serious permanent personal injuries.
8. As a direct result of Defendant IBRAHIM BOATENG's negligence, Plaintiff TOBY ROSS sustained serious personal injuries to his head, neck, back, right knee and entire body. Plaintiff TOBY ROSS 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, the Plaintiff 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.

SECOND CAUSE OF ACTION

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

9. The Plaintiffs incorporate by reference all of the above paragraphs as though fully restated herein.
10. Defendant DELLING TRUCKING, INC. employed Defendant IBRAHIM BOATENG at the time of the September 15, 2008 accident.
11. Defendant DELLING TRUCKING, INC. is responsible through the doctrine of *respondeat superior* for Defendant IBRAHIM BOATENG's negligent actions that caused Plaintiff TOBY ROSS's injuries and resulting damages as described in the Plaintiff's Complaint.

THIRD CAUSE OF ACTION

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

12. Plaintiffs incorporate by reference the above paragraphs as if fully restated herein.
13. Defendant DELLING TRUCKING, INC. was the owner of the vehicle Defendant IBRAHIM BOATENG was driving at the time of the September 15, 2008 accident.
14. Defendant DELLING TRUCKING, INC. entrusted the vehicle involved in the accident at issue to Defendant IBRAHIM BOATENG knowing either through actual knowledge or through knowledge implied or imputed from known facts and circumstances, that Defendant IBRAHIM BOATENG was an inexperienced, reckless, incompetent, or dangerous driver.
15. Defendant DELLING TRUCKING, INC.'s negligent entrustment of the vehicle to Defendant IBRAHIM BOATENG directly or indirectly caused the accident described above.
16. Defendant DELLING TRUCKING, INC. owed a duty to the Plaintiffs not to negligently entrust a vehicle to an inexperienced, reckless, incompetent, or dangerous driver.
17. Defendant DELLING TRUCKING, INC. breached the duty of care by negligently entrusting the automobile to Defendant IBRAHIM BOATENG.
18. As a direct and proximate result of the negligent entrustment by Defendant DELLING TRUCKING, INC. the Plaintiffs have sustained serious permanent personal injuries and resulting damages as described in the Plaintiff's Complaint.

FOURTH CAUSE OF ACTION

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

Plaintiff TAMRA ROSS is the lawful spouse of Plaintiff TOBY ROSS. Plaintiff TAMRA ROSS states that as a result of the negligence of the Defendants IBRAHIM BOATENG and DELLING TRUCKING, INC. she has been deprived of the love, affection, services, consortium, and society of her spouse, Plaintiff TOBY ROSS; 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.

WHEREFORE, Plaintiffs pray that judgment be entered against the Defendants 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 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.

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 Plaintiffs

TO THE DEFENDANT IBRAHIM BOATENG:

The following Interrogatories and Requests for Production of Documents are submitted herewith to you to be answered in writing within 28 days after the date of service thereof upon you.

INSTRUCTIONS FOR RESPONDING

1. All information is to be divulged which is in your possession or control or within the possession and control of your attorneys, investigators, agents, employees or other representatives of you or your insurance company.
2. Where the word "incident" is used, it refers to the incident which is the basis of this lawsuit unless otherwise specified.
3. Where an interrogatory calls for an answer in more than one part, each part should be separated in the answer so that the answer is clearly understandable.
4. "Medical Practitioner" as used herein includes any medial doctor, osteopathic physician, chiropractor or any other person who performs a type of healing art.
5. You are reminded that all answers must be made separately and fully and that an incomplete or evasive answer is a failure to answer.
6. You are under a continuing duty to reasonably supplement your response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, the identity of any person expected to be called as an expert witness at trial, and the subject matter on which he or she is expected to testify, and to correct any response which you know or later learn is incorrect.

REQUEST FOR PRODUCTION NO:

1. A certified copy of any/all applicable liability insurance policies of any kind including the face sheet which lists specific policy limits, as requested in Interrogatories numbered six and seven.

REQUEST FOR PRODUCTION NO:

2. Copies of any/all documents, witness statements obtained by the defendant or any of his 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 which is the subject matter of this complaint.

REQUEST FOR PRODUCTION NO:

4. A copy of any and all reports, notes, and/or memoranda that any expert witness may have produced or authored.

REQUEST FOR PRODUCTION NO.:

5. A duplicate of any/all photographs depicting the damage and copies of any repair estimates for the damage sustained to all vehicles involved in this accident.

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.

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 plaintiffs' 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 accident asserted by the plaintiffs' 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. With respect to the vehicle you occupied at the time of the accident state the name and address of the registered owner and who was driving said vehicle. If you were not driving please state the name, address and phone number of said driver.

Answer:

INTERROGATORY NO:

6. On the date of said accident, was the vehicle you were driving and/or owned, covered under a liability insurance policy ? If so, please state the following :

- a. name of insurance company;
- b. named insured;
- c. dates of coverage;
- d. policy number;
- e. limits of liability coverage;
- f. is the insurance company named above defending you under a “reservation of rights?”

INTERROGATORY NO:

7. With respect to the subject accident, were you covered by any other policies of liability insurance or a financial responsibility bond? If so, please state the following:

- a. name of insurance company;
- b. names insured;
- c. dates coverage;
- d. policy number;
- e. limits of liability coverage;
- f. is the insurance company named above defending you under a “reservation of rights?”

INTERROGATORY NO:

8. State whether you were acting for, or on the behalf of, any other person or entity at the time of the accident.

Answer:

INTERROGATORY NO:

9. If the answer to No. 8 was affirmative, state the name and address of the person or entity and the purpose for which you were operating the automobile.

Answer:

INTERROGATORY NO:

10. State whether you had consumed any alcoholic beverages prior to the accident.

Answer:

INTERROGATORY NO:

11. If the answer to No. 10 is affirmative, state: The time such beverages were consumed; the place such beverages were consumed; the quantity or amount of the beverage consumed.

Answer:

INTERROGATORY NO:

12. State whether you had taken any medication or other drug within twenty-four hours (24) immediately preceding the accident.

Answer:

INTERROGATORY NO:

13. If the answer to No. 12 is affirmative, state: The name of each such medication and the time such medication was taken; the quantity of medication taken; the name of the person if any prescribing the medication.

Answer:

INTERROGATORY NO:

14. State whether you were made a defendant in any criminal or traffic case as a result of the accident.

Answer:

INTERROGATORY NO:

15. If the answer to number 14 is affirmative, state: The Court and the case number involved; the charge or charges against you; whether you pleaded guilty thereto; and the ultimate disposition of the case.

Answer:

INTERROGATORY NO:

15. State the full name and address of your employer and state whether you were employed at the time of the accident.

Answer:

Respectfully submitted,

Charles E. Boyk
Attorney for Plaintiffs

TO THE DEFENDANT DELLING TRUCKING, INC.:

The following Interrogatories and Requests for Production of Documents are submitted herewith to you to be answered in writing within 28 days after the date of service thereof upon you.

INSTRUCTIONS FOR RESPONDING

1. All information is to be divulged which is in your possession or control or within the possession and control of your attorneys, investigators, agents, employees or other representatives of you or your insurance company.
2. Where the word "incident" is used, it refers to the incident which is the basis of this lawsuit unless otherwise specified.
3. Where an interrogatory calls for an answer in more than one part, each part should be separated in the answer so that the answer is clearly understandable.
4. "Medical Practitioner" as used herein includes any medial doctor, osteopathic physician, chiropractor or any other person who performs a type of healing art.
5. You are reminded that all answers must be made separately and fully and that an incomplete or evasive answer is a failure to answer.
6. You are under a continuing duty to reasonably supplement your response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, the identity of any person expected to be called as an expert witness at trial, and the subject matter on which he or she is expected to testify, and to correct any response which you know or later learn is incorrect.

Interrogatory No.

1. State your name, address, telephone number, and identify each person who prepared and assisted in the preparation of the response to these interrogatories.

Interrogatory No.

2. With respect to the vehicle you operated at the time of the collision, state the make, model and year of the tractor; the vehicle identification number (V.I.N. Number) for the tractor; the name and address of the registered owner of the tractor; the name and address of the lessee(s) of the tractor; the license plate number for the tractor, specifying the state the tractor was licensed in; the empty weight of tractor; the length, width and height of the tractor; the changes made to the tractor from the original configuration (and an explanation as to why each was changed or modified); and the I.C.C. Number(s) displayed on the tractor identifying the person said I.C.C. Number(s) were held by at the time of this collision.

Interrogatory No.

3. Had anyone directed you to proceed on the trip during which you were involved in the collision? If so, state the full name and address of that person, the nature of the instructions that were given to you, and the nature of your errand.

Interrogatory No.

4. At the time of the collision, were you acting as an agent, servant, or employee of any person, organization, institution, association, sole proprietorship, partnership or corporation? If so, please:
 - a. Identify such employer or principal by full, legal name, address, and statutory agent authorized to receive service of process.
 - b. Were you acting within the scope of your employment or agency relationship at the time of this collision?
 - c. State where you were coming from and where you were going at the time of the collision.

Interrogatory No.

5. State the full name and address of each person who witnessed or claims to have witnessed the collision.

- a. Do you, your attorney, employer, agent or insurance company have any statements from any witness or party other than yourself concerning the collision? If so, give the name and address of each such witness or party, the date of said statement, the method of recording the statement, and the names and addresses of the person who has custody, possession or control of the above statements.

Interrogatory No.

6. State the full name and address of each person not named in your response to Interrogatory No. 5 hereinabove who was present or claims to have been present at the scene before, at the time of, or immediately after said collision.

Interrogatory No.

7. If you, your attorney, employer, agent, or insurance company has taken photographs, films, or videotape of the parties, vehicles involved, or of the scene of the collision, please produce copies of the same and attach them to your answers herein.

Interrogatory No.

8. At the time of the collision, were you covered under any policy of liability insurance, indemnity agreements, excess insurance policy, umbrella insurance policy, and/or reinsurance policy which provides coverage to satisfy in part or all of any judgment which may be entered against you in this action?
 - a. If so, please produce and attach a certified copy of all such policies and your corresponding declaration pages specifying the name of each company, the policy number(s), the effective period, and maximum limits for each person in each occurrence.
 - b. State the full name and address of the person who has possession or control over the insurance policy or policies referred to in interrogatory No. 8 hereinabove that may be applicable to satisfy any judgment as a result of this collision.

Interrogatory No.

9. If you have ever been charged with an offense involving the operation of a motor vehicle under the influence of alcohol or drugs, please state the details of such charge.

Interrogatory No.

10. Briefly describe all vehicular collisions you have been involved in within the past seven (7) years, setting forth the date, location, and any other persons involved, and any of the investigating policy agencies.

Interrogatory No.

11. If your driver's license has ever been revoked or suspended, please state the reason(s) for which such revocation or suspension.

Interrogatory No.

12. With respect to the vehicle you operated at the time of this collision, please state the number of times you operated said vehicle before the collision in question, including your estimate of miles driven.

Interrogatory No.

13. Identify and give the quantity of all alcohol or drugs, prescription or non-prescription, which you consumed for a period of twenty-four (24) hours prior to the collision.
 - a. Please identify the names, addresses and telephone numbers of the people or business that sold you the alcohol and/or drugs, and, if applicable, the persons who prescribed the drugs you took.
 - b. Please identify the location where you consumed said alcohol or drugs.
 - c. Please identify the type of drugs, prescription or nonprescription, by name and dosage of which you consumed within this time period.

Interrogatory No.

14. Identify the names and addresses of all witnesses you intend to have testify at trial in this matter.

Interrogatory No.

15. Immediately prior to the collision, please state your speed and direction of your travel.

Request for Production

1. Produce any documents, statements or recordings obtained from plaintiffs at any time subsequent to the subject accident.

Interrogatory No.

16. Identify the names, addresses, and telephone numbers of all expert witnesses you intend to have testify at trial in this matter.

Interrogatory No.

17. With regard to any experts listed above, please provide the subject matter on which each expert is expected to testify as well as all opinions held by each expert relating to this litigation.

Request for Production

2. Produce any and all documents and/or exhibits you plan on introducing into evidence at the trial of this matter.

Interrogatory No.

18. Describe in detail, the route(s) you drove while engaged in your occupation from September 2003 through the present, indicating the miles you drove, the number of hours you drove, the number of hours you were on duty but not driving and the number of hours you were completely off duty.

Request for Production

3. Please produce a copy of your driver's log book(s) and entries for the time period of January 1, 2003 through the present.

Request for Admission

1. Do you admit that the collision of September 15, 2008 was caused by your negligence? A. If not, please state the basis for your denial.

Request for Admission

2. Do you admit that at the time of the September 15, 2008 collision you were in violation of the 70-hour/8-day rule as specified in 49 C.F.R. §395.3(b)(2)?

Interrogatory No.

19. If your response to Request for Admission No. 2 above is anything other than an unqualified admission, please state the basis for our denial, including, but not limited to, your calculation for the number of hours you were on duty during the eight consecutive days prior to the collision.

Request for Admission

3. Do you admit that from September 1, 2008 through September 15, 2008 you violated the 15 hour per day “on duty rule” as specified in 49 C.F.R. §395.3(b)(2)?

Interrogatory No.

20. If your response to Request for Admission No. 3 above is anything other than an unqualified admission, please state the basis for your denial, including, but not limited to, your calculation for the number of hours you were on duty from September 1, 2008 through September 15, 2008.

Request for Admission

4. Do you admit that your logbook for the time period of September 1, 2008 up and September 15, 2008 contained false logbook entries in violation of 49 C.F.R. §395.8(e)?

Interrogatory No.

21. If your response to Request for Admission No. 3 above is anything other than an unqualified admission, please state the basis for your denial.

Request for Admission

5. Do you admit that on September 15, 2008, your log book(s) entries were not current to your last change of duty status in violation of 49 C.F.R. §395.8(f)(1)?

Interrogatory No.

22. If your response to Request for Admission No. 5 above is anything other than an unqualified admission, please state the basis for your denial.

Interrogatory No.

23. Identify the basis and manner in which you were compensated for your work as a driver during the time period of September 2003 up and through the present, (i.e. by the mile, by the load, by the hour, straight salary, or explain any other basis), and explain all of your work-related incentives available to you from your employer.

Interrogatory No.

24. Please identify your policy and procedures and/or your employer's policy and procedures and/or your shipper's policy and procedures regarding a driver's duty at a

collision, time tables for completing a particular run, the logging of entries into the driver's log book for on-duty driving time, on-duty-but-not-driving time, and off-duty time, and off-duty time regarding loading, unloading, fueling, meals, drop and hook of trailers, switching trailers, etc.

- a. Identify all training and/or instruction you received regarding your answer to the above interrogatory.

Interrogatory No.

25. Has the person and/or company for which you drive provided you with a copy of the Federal Motor Carrier Safety Regulations?

- b. If so, please identify the date thereof and the identity of the person and company that provided these regulations to you.

Interrogatory No.

26. Have you ever received an out of service order and if so please identify the reason(s) thereof and the date of such order

Interrogatory No.

27. Have you submitted to a post-collision alcohol or controlled substance test required under 49 C.F.R. §382.303?

- a. If so, please identify the date of such test(s), the person who administered the test(s) and the results of said test(s).
- b. If you refused to submit to these test(s) please state your reasons for your refusal.

Interrogatory No.

28. Please list the location and identity of persons having knowledge of discoverable matters relating to either the subject incident or plaintiffs claim for damages.

Respectfully submitted,

Charles E. Boyk
Attorney for Plaintiffs