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DEBORAH A. HYERS
CLERK OF COURTS
ASHLAND, OHIO

IN THE COMMON PLEAS COURT OF ASHLAND COUNTY, OHIO

DUSTIN WENTZ,
8050 Township Road 1074
Carey, Ohio 43316

Plaintiff,

v.

GEORGE M. SIMS
1036 Township Road 126
Nova, Ohio 44859

and

**CONTINENTAL INSURANCE
COMPANY, d/b/a CNA INSURANCE**
151 Franklin Street
Chicago, Illinois 60606

Defendants.

) Case No.: 19-CIV-144
)
) Judge:
)
) **COMPLAINT**
)
) *(Jury Demand Endorsed Hereon)*
)
) Charles E. Boyk (0000494)
) Kathleen R. Harris (0088079)
) Charles E. Boyk Law Offices, LLC
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) Attorneys for Plaintiffs
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Now comes Plaintiff Dustin Wentz, by and through counsel, and hereby files this Complaint against Defendant George M. Sims for injuries arising from an automobile versus pedestrian collision on April 9, 2019, and against Defendant Continental Insurance Co., d/b/a CNA Insurance, for a declaratory judgment regarding underinsured motorist coverage. In support of his claims, Plaintiff states as follows:

PARTIES

1. Plaintiff Dustin Wentz is an individual and a resident of Carey, Wyandot County, Ohio.

2. Defendant George M. Sims is an individual and a resident of Nova, Ashland County, Ohio.
3. Defendant Continental Insurance Co., d/b/a CNA Insurance, is an insurance company licensed to sell insurance in the State of Ohio that issued a policy of insurance, including uninsured and underinsured motorist coverage, to Plaintiff's employer Vaughn Industries, under which Plaintiff qualified as an insured at the time of the incident described herein. A copy of the policy is not attached hereto pursuant to Civil Rule 10(D) because Plaintiff is not in possession of a copy of the policy.

JURISDICTION AND VENUE

4. The Ashland County Common Pleas Court has jurisdiction over this matter pursuant to R.C. 2305.01.
5. Venue is proper in this Court pursuant to Civil Rule 3(C)(1) and 3(C)(6) as this is the county in which Defendant Sims resides and the county in which all or part of the claims for relief arose.
6. Pursuant to Civil Rule 8(A), Plaintiff states that he seeks a judgment in excess of \$25,000.00.

FACTUAL ALLEGATIONS

7. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully rewritten herein.
8. On or about April 9, 2019, Plaintiff Dustin Wentz was working for Vaughn Industries as a flagger for a construction crew in the westbound lane of County Road 40 in Sullivan Township, Ashland County, Ohio near Township Road 581. It was shortly after 9:00 a.m. on a clear, dry day.

9. The roadway in that area was marked as a construction zone. Cones were blocking the westbound lane behind a parked utility vehicle and a construction zone sign was placed behind the utility vehicle, which had its four-way flashers on and was plainly visible to oncoming traffic.
10. Dustin Wentz was standing on the passenger side of the utility vehicle within the marked construction zone. He was wearing a reflective safety vest and a helmet and holding a portable stop sign.
11. At the same time, Defendant George M. Sims, a 78-year-old man with macular degeneration, was operating his Chevrolet Trailblazer SUV westbound on County Road 40 approaching the marked construction zone.
12. Distracted by adjusting his visor, Defendant Sims failed to see the construction zone until he was about to strike the utility truck. Defendant Sims did not brake until just before impact, when he swerved to the left, ran over multiple traffic cones, and, still traveling at least 40 mph, struck Dustin Wentz at least once.
13. Dustin Wentz was thrown into the air on impact and his helmet was thrown off. He landed hard on the road, struck his head, and lost consciousness for several minutes.
14. Defendant Sims thought he had simply struck traffic cones and did not realize he had hit a person until he stopped and saw Dustin Wentz laying on the ground.
15. Plaintiff Dustin Wentz was life-flighted to Summa Health Akron City Hospital, where he was admitted for approximately a week and underwent multiple surgical procedures. He suffered multiple facial fractures, a skull fracture, and fractures to his left leg and ankle, along with a traumatic brain injury and numerous lacerations and abrasions.

16. Defendant Sims was cited by the Ohio State Highway Patrol for a violation of R.C. 4521.21(A), failing to maintain assured clear distance ahead. He faces additional fines associated with distracted driving.

FIRST CAUSE OF ACTION
(Negligence – Defendant George M. Sims)

17. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully rewritten herein.

18. Defendant George M. Sims owed Plaintiff Dustin Wentz a duty of care to operate his vehicle in accordance with the laws of the State of Ohio, and not to operate his vehicle in such a manner that may cause injury to Plaintiff.

19. Defendant Sims breached this duty by failing to keep a proper lookout, driving distracted, failing to maintain assured clear distance ahead, and striking Plaintiff Dustin Wentz in a marked construction zone.

20. As a direct and proximate result of Defendant George M. Sims's negligence and breach of his duty of care, Plaintiff Dustin Wentz sustained serious personal injuries including but not limited to a traumatic brain injury, fractures to his sinuses, skull, and left leg, abrasions, and lacerations. Dustin was required to undergo medical care, including surgeries, and incurred medical care costs along with other economic damages, and he incurred and continues to incur great pain, suffering, severe mental anguish, and emotional distress.

21. Further, Plaintiff believes that his injuries are permanent in nature and that he will require future medical care and incur future medical care costs, and that he will continue to endure great pain, suffering, mental anguish, and emotional distress.

SECOND CAUSE OF ACTION
(Punitive Damages – Defendant George M. Sims)

22. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully rewritten herein.
23. The acts of Defendant George M. Sims described herein constitute malice as that term is used in R.C. 2315.21 and interpreted by the courts of the State of Ohio. In particular, by driving distracted and operating a vehicle despite diminished eyesight due to known macular degeneration, Defendant Sims consciously disregarded the rights and safety of Plaintiff Dustin Wentz in a manner that had a great probability of causing substantial harm, and that did in fact cause substantial harm to Mr. Wentz.
24. Plaintiff is entitled to and demands punitive damages against Defendant Sims, in an amount to be determined by the trier of fact.

THIRD CAUSE OF ACTION
(Declaratory Relief – UM/UIM Coverage – Defendant Continental Ins. Co.)

25. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully rewritten herein.
26. Defendant Continental Insurance Co., d/b/a CNA Insurance, issued a policy of insurance to Plaintiff Dustin Wentz's employer Vaughn Industries. That policy provided uninsured and underinsured motorist coverage, and Dustin Wentz qualified as an insured at the time of the incident described herein.
27. Plaintiff has complied with all conditions precedent for perfecting a claim for uninsured and/or underinsured motorist benefits against the Continental/CNA policy.
28. At the time of the automobile versus pedestrian collision described herein, Defendant George M. Sims had liability policy limits that are insufficient to cover the damages

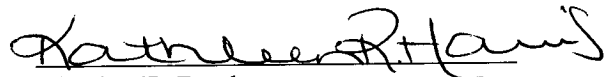
sustained by Plaintiff Dustin Wentz, and which are lower than the uninsured/underinsured policy limits under the Continental/CNA policy.

29. As a direct and proximate result of the underinsured Defendant's negligence, Plaintiff has incurred or will incur the medical expenses and other related damages set forth in this Complaint, for which there is no or insufficient liability coverage. Therefore, Plaintiff Dustin Wentz brings this claim for UM/UIM coverage against Defendant Continental Insurance Co., d/b/a CNA Insurance.

WHEREFORE, Plaintiff prays for:

- (A) Judgment against Defendant George M. Sims in an amount exceeding Twenty-Five Thousand Dollars (\$25,000.00), together with interest, costs, reasonable attorney fees associated herewith, and such other relief as the Court may deem just;
- (B) Punitive damages against Defendant George M. Sims in an amount to be determined by the jury; and
- (C) A declaratory judgment in his favor stating that Dustin Wentz is entitled to uninsured/underinsured motorist coverage under Defendant Continental Insurance Co.'s policy.

Respectfully submitted,

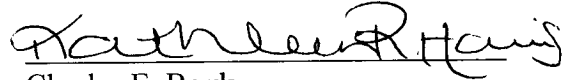


Charles E. Boyk
Kathleen R. Harris
Attorneys for Plaintiff

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues triable by right.

Respectfully submitted,

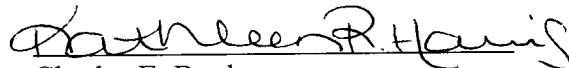


Charles E. Boyk
Kathleen R. Harris
Attorneys for Plaintiffs

PRAECIPE

TO THE CLERK:

Please serve summons and Complaint upon Defendants by certified mail, return receipt requested, at their respective addresses listed on the caption.



Charles E. Boyk
Kathleen R. Harris
Attorneys for Plaintiff