

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ANDREW ROBINETTE and LISA  
ROBINETTE,

Plaintiffs,

v.

SLIVA TRANSPORTATION, INC.,  
DONALD McCARVILLE, and  
EMPLOYERS MUTUAL CASUALTY  
COMPANY,

Defendants.

CASE NO. \_\_\_\_\_

**PETITION AT LAW  
(Jury Trial Requested)**

**COME NOW** the Plaintiffs, Andrew Robinette and Lisa Robinette, and for their causes of action against the Defendants, Sliva Transportation, Inc., Donald McCarville, and Employers Mutual Casualty Company, state:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff, Andrew Robinette, at all times material, was a resident of Polk County, Iowa.
2. Defendant Sliva Transportation, Inc., at all times material, was a Nebraska corporation.
3. Defendant Donald McCarville, at all times material, was a resident of Columbus, Nebraska.
4. A vehicle owned by Defendant Sliva Transportation was operated by Defendant Donald McCarville in the State of Iowa on December 3, 2007.
5. Defendant Employers Mutual Casualty Company, at all times material, was an insurance company doing business in Polk County, Iowa.

6. The acts and omissions giving rise to Plaintiffs' causes of action occurred in Cass County, Iowa.
7. Venue is proper in Polk County, Iowa pursuant to Iowa Code § 321.507 (2008).
8. The amount in controversy exceeds the maximum jurisdictional amount for Small Claims Court.

### **OPERATIVE FACTS**

9. On December 3, 2007, a semi-trailer operated by Satvender Singh Grewal broke down between mile markers 71 and 72 on Interstate 80 in Cass County, Iowa. Grewal was able to park the truck completely outside the traveled portion of the roadway, with all of its passenger-side tires on the grassy shoulder of the road.
10. Grewal, or another person on his behalf, called Mid-Iowa Towing, L.L.C. and requested that the Grewal truck be towed.
11. Plaintiff Andrew Robinette, an employee of Mid-Iowa Towing, L.L.C., was sent to the location where Grewal's truck broke down.
12. Plaintiff Andrew Robinette arrived at the location of Grewal's disabled truck shortly before 3:15 p.m.
13. Plaintiff Andrew Robinette parked his tow truck as far away from the traveled portion of the roadway as possible, with all of the truck's passenger-side tires on the grassy shoulder of the road.
14. When his tow truck was parked on the shoulder of the road, Plaintiff Andrew Robinette turned on the many flashing lights on his tow truck to draw attention to the vehicles.

15. Plaintiff Andrew Robinette ensured that three reflective triangle warning devices were placed behind the disabled Grewal truck to make the vehicles even more visible to approaching traffic. The rearmost warning device was about one hundred feet from the back of the disabled Grewal truck.
16. As a result of the size of the vehicles and the various warning devices, the two vehicles were plain and obvious to be seen on the shoulder of the road.
17. The weather was clear and sunny and there was no precipitation. The traveled portion of the roadway and the shoulder of the road were clear and dry.
18. Plaintiff Andrew Robinette began to repair Grewal's disabled semi so that it could be towed.
19. Plaintiff Andrew Robinette stayed completely outside the traveled portion of the roadway. At no time did he cross the white line and enter any driving lane of the highway.
20. At that same time and place, Donald McCarville was operating a semi-trailer owned by Defendant Sliva Transportation.
21. At all times material hereto, Defendant Donald McCarville was employed by Defendant Sliva Transportation.
22. Defendant Donald McCarville failed to keep his semi-trailer under control, such that it swerved and drove outside the traveled portion of the roadway as it approached Plaintiff Andrew Robinette.
23. Defendant Donald McCarville drove his semi-trailer outside the white line and struck Plaintiff Andrew Robinette and Satvender Singh Grewal.

24. As a result of the collision, Defendant Donald McCarville caused Plaintiff Andrew Robinette serious and permanent injuries and damages as more fully described herein.
25. As a result of the collision, Defendant Donald McCarville killed Satvender Singh Grewal.
26. Defendant Donald McCarville did not stop but drove away from the scene of the collision. The identity of the Defendants is only known because an eyewitness followed Defendant Donald McCarville's truck until it could be stopped by law enforcement authorities.

**COUNT I**  
**NEGLIGENCE OF DONALD MCCARVILLE**  
**AND SLIVA TRANSPORTATION, INC.**

27. Plaintiffs reallege paragraphs 1 – 26 as if fully set forth herein.
28. While operating the semi-trailer owned by Defendant Sliva Transportation, Inc., at said place and time, Donald McCarville was negligent in one or more of the following particulars:
- a. failing to keep a proper lookout;
  - b. failing to have the motor vehicle he was operating under proper control;
  - c. failing to drive at a careful and prudent speed, in violation of Iowa Code § 321.285;
  - d. failing to use due care to avoid hitting a pedestrian, in violation of Iowa Code § 321.329;
  - e. failing to keep the motor vehicle in the traveled portion of the roadway;
  - f. failing to approach a stationary towing vehicle with due caution, failing to make a lane change into the right lane of the road, and failing to reduce the speed of his vehicle, in violation of Iowa Code § 321.323A;

- g. fleeing the scene of the incident, in violation of Iowa Code § 321.263;
- h. failing to comply with other regulations and requirements of Iowa and Federal authorities; and
- i. failing to act as a reasonable person under the circumstances then and there existing.

29. The negligence of Defendants Donald McCarville and Sliva Transportation, Inc. was willful and wanton, and in reckless disregard of the health, safety, and rights of Plaintiff Andrew Robinette, entitling Plaintiff Andrew Robinette to punitive damages in addition to the damages set forth below.

30. The above acts and omissions by Defendants Donald McCarville and Sliva Transportation, Inc. were a proximate cause of the injuries to Plaintiff Andrew Robinette and the resulting damages as more fully described below.

**COUNT II**  
**LIABILITY OF SLIVA TRANSPORTATION, INC.**  
**AS CONSENT OWNER OF MOTOR VEHICLE**

31. Plaintiffs reallege paragraphs 1 – 30 as if fully set forth herein.

32. At all times material, Defendant Sliva Transportation, Inc. was the owner of the semi-trailer operated by its employee, Donald McCarville, at the time of the subject collision.

33. At the time of the collision, Donald McCarville was operating the subject truck with the knowledge and consent of Defendant Sliva Transportation, and, as a result, pursuant to Iowa Code § 321.493 and Iowa common law, Defendant Sliva Transportation is liable to Plaintiff Andrew Robinette for each of the particulars of negligence committed by Donald McCarville, as set forth above.

34. The above acts and omissions by Donald McCarville and Defendant Sliva Transportation, Inc. were a proximate cause of the injuries to Plaintiff Andrew Robinette and the resulting damages as more fully described below.

**COUNT III**  
**LIABILITY OF SLIVA TRANSPORTATION, INC.**  
**THROUGH RESPONDEAT SUPERIOR**

35. Plaintiffs reallege paragraphs 1 – 34 as if fully set forth herein.

36. At all times material hereto, Donald McCarville was employed by Defendant Sliva Transportation, Inc.

37. Donald McCarville was unfit to be a truck driver and Defendant Sliva Transportation, Inc. was reckless in employing and retaining him as such.

38. At the time of the subject collision, Donald McCarville was acting within the scope of his employment with Defendant Sliva Transportation, Inc., and thus Defendant Sliva Transportation, Inc. is liable to Plaintiff Andrew Robinette for each of the particulars of negligence committed by Donald McCarville as set forth above, and for punitive damages, pursuant to the doctrine of respondeat superior.

39. The above acts and omissions by Donald McCarville and Defendant Sliva Transportation, Inc. were a proximate cause of the injuries to Plaintiff Andrew Robinette and the resulting damages as more fully described below.

**COUNT IV**  
**LOSS OF SPOUSAL CONSORTIUM**

40. Plaintiffs reallege paragraphs 1 through 39 as though fully set forth herein.

41. Plaintiff Andrew Robinette and Plaintiff Lisa Robinette are married.

42. The acts and omissions of Defendants Donald McCarville and Sliva Transportation, Inc., have proximately caused Plaintiff Lisa Robinette to incur the loss of Plaintiff Andrew Robinette's services, companionship, cooperation, affection, attention, and aid in the marital relationship within the family and home.

**COUNT V**  
**UNDERINSURED MOTORIST CLAIM**  
**DEFENDANT EMPLOYERS MUTUAL CASUALTY COMPANY**

43. Plaintiffs reallege paragraphs 1 through 42 as though fully set forth herein.

44. Plaintiff, at all times material hereto, was covered under an insurance policy owned by his employer and the owner of his tow truck, Mid-Iowa Towing L.L.C., insurance policy number 3E5-73-11-08 with Defendant Employers Mutual Casualty Company. The policy provides underinsured motorist coverage for each occurrence.

45. The injuries and damages sustained by Plaintiffs and by non-party Satvender Singh Grewal in the subject motor vehicle collision exceed the primary liability insurance limits.

46. Plaintiffs hereby make a claim under the underinsured policy referenced above.

**DAMAGES**

47. As a result of the above-described acts and omissions by Defendants Donald McCarville and Sliva Transportation, Inc., Plaintiff Andrew Robinette has sustained serious permanent injuries and has been damaged as follows:

- a. past medical and hospital expenses;
- b. future medical and hospital expenses;
- c. past pain and suffering;

- d. future pain and suffering;
- e. past loss of wages;
- f. future loss of earning capacity;
- g. past loss of full function of the mind and body;
- h. future loss of full function of the mind and body;
- i. long-term care and nursing expenses;
- j. loss of spousal consortium; and
- k. other miscellaneous expenses.

**WHEREFORE**, Plaintiffs Andrew Robinette and Lisa Robinette respectfully request a judgment against Defendants Donald McCarville, Sliva Transportation, Inc., and Employers Mutual Casualty Company, for the injuries and actual damages they have sustained, and for punitive damages, together with interests and costs, all as provided by law, and for any other relief to which he is entitled.

**REQUEST FOR JURY TRIAL**

Plaintiffs Andrew Robinette and Lisa Robinette request a trial by jury.

Respectfully submitted,

LaMARCA & LANDRY, P.C.

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