

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

2016 APR 18 PM 4:56

STEPHAN HARRIS, CLERK
CASPER

Ian K. Sandefer
FULLER, SANDEFER & ASSOCIATES
Attorneys at Law, LLC
242 South Grant Street
Casper, WY 82601
PHONE (307) 265-3455; FAX (307) 265-2859
Email: sandefer@fullersandeferlaw.com

Robert G. Pahlke
Kyle J. Long
THE ROBERT PAHLKE LAW GROUP, PC, LLO
2425 Circle Drive, Suite 200
Scottsbluff, NE 69363
PHONE (308) 633-4444; FAX (308) 633-4445
Email: rgp@pahlkelawgroup.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

CLINTON D. SAUNDERS and)
TANIS LOVERCHECK-SAUNDERS)

Plaintiffs,)

vs.)

Civil Action No. 16-CV-29-S

MAGNA ENERGY SERVICES, LLC,)
and TYRUS CARR,)

Defendant.)

AMENDED COMPLAINT

Plaintiffs, Clinton D. Saunders and Tanis Lovercheck-Saunders (hereinafter “Mr. Saunders,” “Ms. Saunders,” or “Plaintiffs”), by and through their undersigned counsel, allege as follows:

Parties - Venue - Jurisdiction

1. Plaintiff, Clinton Saunders, is a resident of Natrona County, Wyoming.

2. Plaintiff, Tanis Lovercheck-Saunders, is a resident of Natrona County, Wyoming.

3. At all times relevant hereto, Defendant Magna Energy Services, LLC (hereinafter “Magna”), was, and is, a foreign corporation formed under the laws of the State of Colorado with its principal place of business in Broomfield, Colorado.

4. At all times relevant hereto, Defendant Tyrus Carr (hereinafter “Defendant Carr”), was a resident of Rapid City, South Dakota,

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 as Plaintiffs and Defendants are citizens of different states and the amount in controversy in this case exceeds \$75,000.00.

6. Venue in this case is proper under 28 U.S.C. § 1391(a)(2) as this judicial district is where a substantial part of the events or omissions giving rise to this claim occurred.

Factual Allegations

7. Plaintiffs hereby incorporate paragraphs 1-6 by reference.

8. On December 19, 2013, at around 7:00 p.m. in Campbell County, Wyoming, Defendant Carr was driving a semi-tanker trailer combination unit owned by Magna. Defendant Carr was pulling a tanker trailer when he attempted to execute an unsafe and illegal “U-turn” on Highway 50. Defendant Carr was an employee, agent, and servant of Magna Energy Services, LLC, and was acting within the course and scope of his employment and with the authority of Magna Energy while driving in Campbell County, Wyoming. Mr. Carr’s negligence is imputed to Magna Energy Services, LLC under the doctrine of respondeat superior.

9. Defendant Carr’s tanker trailer came to a rest blocking both lanes of travel, at night, on a highway with a speed limit of sixty-five (65) miles per hour.

10. Mr. Saunders was traveling southbound on Highway 50 – he was headed home from his teaching job in North Dakota to spend Christmas with his family.

11. As Mr. Saunders approached the vehicle, he could see headlights pointing in his direction from the northbound side of the roadway.

12. When Mr. Saunders was able to recognize the hazard and react, he applied his brakes and swerved to his right in an attempt to avoid the tanker trailer blocking his lane of travel. However, due to the angle of the trailer and the limited ability to perceive the dangerous conditions Magna and Defendant Carr had created, Mr. Saunders' van impacted the rear of the tanker trailer.

13. The damage caused to the Saunders' vehicle as a result of Defendants' choice to block a highway and inhibit the normal flow of traffic is reflected in the pictures below:



14. The force of the impact caused Mr. Saunders severe and life-threatening injuries, including, but not limited to a pelvic fracture, blunt thoracic trauma, an ACL tear in his right knee, and a SLAP tear in his left shoulder.

15. Mr. Saunders continues to suffer from the injuries he received in the December 19, 2013 crash. Mr. Saunders has chronic pain and impairment as a result of the wreck.

16. Magna was negligent and/or reckless in its hiring, training, instruction, supervision, and/or retention of its employees, agents, and servants. This includes, but is not limited to, Magna's failure to implement proper and appropriate inspections, procedures, and safeguards to ensure its drivers follow the law and do not create life-threatening hazards for unsuspecting motorists.

17. Defendant Carr was negligent and/or reckless in his operation of the semi-tanker trailer combination unit.

18. Mr. Saunders suffered serious bodily injury as a direct and proximate result of Magna's and/or Defendant Carr's negligence/recklessness.

First Cause of Action (Negligence / Recklessness)

19. Plaintiffs hereby incorporate all the foregoing allegations in this First Cause of Action.

20. Magna was negligent and/or reckless in the operation of its semi-tanker trailer combination unit by failing to act as a reasonable person/entity would under all the circumstances and, likewise, negligent and/or reckless in its hiring, training, instruction, supervision, and/or retention of its employees, agents, and servants, thereby breaching its duty of care toward Mr. Saunders, which proximately caused Mr. Saunders' injuries. The negligence of Magna's employees, agents and servants is imputed to Magna under the doctrine of respondeat superior.

21. As a direct and proximate result of Magna's negligent and/or reckless conduct, Mr. Saunders has suffered physical injury to his person and will in the future suffer physical and mental pain and anguish; disability, past and future, and permanent in nature; loss of enjoyment of life, past and future; incurred expenses of necessary medical care, treatment, and services and

will incur such expenses in the future; and Mr. Saunders has incurred and will in the future incur costs.

Second Cause of Action (Punitive Damages)

22. Plaintiffs hereby incorporate all the foregoing allegations in this Second Cause of Action.

23. Magna's choice to not to properly hire, train, instruct, supervise and/or its inappropriate retention of employees, agents, and servants, constitutes willful and wanton misconduct, all of which was committed in reckless disregard for the consequences. Magna's actions and inactions indiscriminately put all members of the public at risk of serious injury or death because there is no effective action that unsuspecting motorists could have taken to avoid the risk of harm created by Magna. All of these acts and omissions are such a departure from the ordinary standard of care that Magna is liable to Plaintiffs for punitive and exemplary damages. Punitive and exemplary damages should be awarded in this matter in an amount sufficient to punish Magna, to make an example of it and to deter future conduct of the same type. The amount of said punitive damages shall be proven at trial.

Third Cause of Action (Negligence / Recklessness)

24. Plaintiffs hereby incorporate all the foregoing allegations in this Third Cause of Action.

25. Defendant Carr was negligent and/or reckless in the operation of his semi-tanker trailer combination unit by failing to act as a reasonable person would under all the circumstances, thereby breaching his duty of care toward Mr. Saunders, which proximately caused Mr. Saunders' injuries.

26. As a direct and proximate result of Defendant Carr's negligent and/or reckless conduct, Mr. Saunders has suffered physical injury to his person and will in the future suffer physical and mental pain and anguish; disability, past and future, and permanent in nature; loss of enjoyment of life, past and future; incurred expenses of necessary medical care, treatment, and services and will incur such expenses in the future; and Mr. Saunders has incurred and will in the future incur costs.

Fourth Cause of Action (Punitive Damages)

27. Plaintiffs hereby incorporate all the foregoing allegations in this Fourth Cause of Action.

28. Defendant Carr's actions, despite knowing the dangers and possible consequences, constitutes willful and wanton misconduct, all of which was committed in reckless disregard for the consequences. Defendant Carr's actions and inactions indiscriminately put all members of the public at risk of serious injury or death because there is no effective action that unsuspecting motorists could have taken to avoid the risk of harm created by Defendant Carr. All of these acts and omissions are such a departure from the ordinary standard of care that Defendant Carr is liable to Plaintiffs for punitive and exemplary damages. Punitive and exemplary damages should be awarded in this matter in an amount sufficient to punish Defendant Carr, to make an example of him and to deter future conduct of the same type. The amount of said punitive damages shall be proven at trial.

Fifth Cause of Action (Loss of Consortium)

29. Plaintiffs hereby incorporate all the foregoing allegations in this Fifth Cause of Action.

30. At all relevant times, Clinton Saunders was married to Tanis Lovercheck-Saunders.

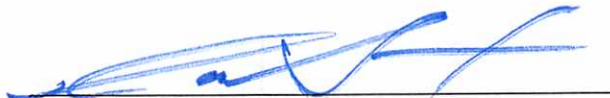
31. As a direct and proximate result of Mr. Saunders' injuries that Defendants caused, Ms. Saunders has suffered a loss of Mr. Saunders' companionship, comfort, society, services and consortium. Additionally, Ms. Saunders has been required to render substantial services, including nursing care and other attendant care to assist her husband because of the injuries Defendants caused him.

WHEREFORE, Plaintiffs demands judgment against Defendants as follows:

- 1) For an amount that will reasonably compensate Plaintiffs for all injuries and damages, general and specific, sustained;
- 2) For punitive damages against Defendants according to proof;
- 3) For interest as allowed by law;
- 4) For Plaintiffs' costs, disbursements and reasonable attorney's fees incurred herein; and
- 5) For such other and further relief as the Court may deem just and proper.

DATED and SIGNED this 18th day of April, 2016.

Attorneys for the Plaintiffs



Ian K. Sandefer (WSB # 6-4334)
Fuller, Sandefer & Associates
Attorneys at Law, LLC
242 South Grant Street
Casper, WY 82601
(307) 265-3455

And

Kyle J. Long (NSBA #22683)
Robert G. Pahlke (NSBA #13201)
The Robert Pahlke Law Group
2425 Circle Drive, Suite 200
Scottsbluff, NE 69361
(308) 633-4444

CERTIFICATE OF SERVICE

THE UNDERSIGNED hereby certifies that a true, accurate and complete copy of the above document entitled **AMENDED COMPLAINT** was served this 18th day of April, 2016 by the following means:

Patrick Holscher
Schwartz, Bon, Walker & Studer, LLC
141 South Center Street, Suite 500
Casper, WY 82601-2588
(307) 235-6681

- U.S. MAIL
- HAND DELIVERY
- EMAIL
- FACSIMILE
- CM/ECF



Ian K. Sandefer