

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA**

ELIZABETH COTTER, as Personal
Representative of the Estate of
David H. Cotter, Deceased,

Plaintiff,

v.

Case No. _____

PETER N. DIAZ,
FEDEX FREIGHT, INC., and
PROTECTIVE INSURANCE COMPANY,

Defendants.

_____ /

COMPLAINT

Plaintiff, Elizabeth Cotter, as Personal Representative of the Estate of David H. Cotter, deceased (the “Cotter Estate”), by and through the undersigned counsel, sues Defendants, Peter N. Diaz, FedEx Freight, Inc., and Protective Insurance Company, and state in support the following:

1. This Complaint includes claims for damages brought under the Florida Wrongful Death Act, Fla. Stat. §§ 768.16 - 768.26.
2. This is an action in excess of \$30,000.00, exclusive of interest, costs, and attorney’s fees.
3. David Cotter (the “Decedent”) was a Florida resident who was killed on a Florida highway, Interstate 4, near Davenport, Florida.
4. Defendant Peter N. Diaz (“Diaz”) is a resident of Hillsborough County, Florida, with an address at 4902 E. 97th Ave., Tampa, Florida 33617.

5. Defendant FedEx Freight, Inc. (“FedEx Freight”) is an Arizona corporation, which conducts business in the state of Florida and is a registered foreign corporation with the Florida Secretary of State.

6. Defendant Protective Insurance Company (“Protective Insurance”) is an Indiana corporation, which conducts business in the state of Florida and is a registered foreign corporation with the Florida Secretary of State.

7. This action includes a claim for the wrongful death of David Cotter.

8. The potential beneficiaries of a recovery for the wrongful death of Decedent under the Florida Wrongful Death Act, Fla. Stat. §§ 768.16 - 768.26, and their relationship to the Decedent are as follows:

- a. Elizabet Cotter, personal representative of the Estate;
- b. Elizabeth Cotter, spouse;
- c. Adam E. Cotter, adult son;
- d. Nathan D. Cotter, adult son; and
- e. Matthew G. Cotter, adult son.

FACTUAL ALLEGATIONS

9. This matter arises from the wrongful death of David Cotter, a pedestrian who was involved in an auto accident on August 9, 2019.

10. On August 9, 2019, Decedent was adjacent to his car on the right shoulder of Interstate 4, between mile markers 46 and 47, after his vehicle ran out of gas.

11. Defendant Diaz was driving a 2014 Kenworth 310 tractor truck, with two trailers, in the rightmost lane on Interstate 4 at that time.

12. Decedent was struck by Defendant Diaz's motor vehicle when Defendant Diaz failed to stop or slow down.

13. Decedent was hit by the first trailer of Defendant Diaz's vehicle and killed instantly upon impact of the resulting collision.

14. Decedent's body was found on the right shoulder of Interstate 4.

15. Defendant Diaz told local authorities that he saw David Cotter at a distance in the right-most outer lane, at which point Defendant Diaz claims that he changed to the center lane.

16. However, this story was false.

17. Defendant Diaz never changed lanes until after he had already struck the Decedent, who when struck by Defendant Diaz was walking adjacent to his car that had run out of gas and was parked on the shoulder.

18. Defendant Diaz falsely told authorities he attempted to change lanes twice to avoid the Decedent, but struck him anyway because Decadent chased after the truck in an attempt to throw himself in front of the truck. This story was entirely false.

19. Defendant Diaz told local authorities that he collided with the Decedent in the inner left lanes of Interstate 4. This was also entirely false.

20. Defendant Diaz told local authorities that David Cotter committed suicide by chasing down Defendant Diaz's motor vehicle across multiple lanes of Interstate 4. This statement was entirely false.

21. Defendant Diaz was operating within the scope of his employment with Defendant FedEx Freight.

22. Defendant FedEx Freight requires all vehicles to contain dashboard cameras ("dash cams"), and Defendant Diaz's vehicle also contained such a dash cam.

23. Aside from Defendant Diaz and the dash cam in Defendant FedEx Freight's possession, there are no other surviving witnesses to David Cotter's death.

24. The dash cam footage in Defendant FedEx Freight's possession shows that David Cotter was struck near the right shoulder of Interstate 4, near his car, as described herein.

25. Fedex Freight refused to provide a copy of this video to law enforcement, and failed to update the record to reflect that Defendant Diaz made false statements regarding the accident after it had occurred.

26. It is on the basis of the false statements that law enforcement concluded the Decedent passed by suicide.

27. At the time of Defendant Diaz's collision with Decedent, Defendant FedEx Freight had in full force and effect a policy of business automobile liability insurance with Defendant Protective Insurance, policy number X1983-18 (the "Policy"), with a combined single policy limit of \$5,000,000.00.

28. Defendant Protective Insurance's business automobile liability policy covered the damages that arose when Defendant Diaz, operating a truck owned by Defendant FedEx Freight, struck and killed Decedent.

COUNT I - WRONGFUL DEATH
PLAINTIFF AGAINST DEFENDANTS DIAZ AND FEDEX FREIGHT

29. Plaintiff incorporates all allegations contained in paragraphs 1 through 26, as if set out fully herein.

30. As the operator of an automobile in Florida, Defendant Diaz had a legal duty to exercise due care in avoiding collisions with pedestrians such as Decedent. Fla. Stat. § 316.130(15).

31. Defendant Diaz breached his duty of due care by:
- a. failing to slow and stop his vehicle when he saw Decedent, a pedestrian, near his lane;
 - b. driving his vehicle in a careless manner;
 - c. violating the traffic control laws of the State of Florida; and
 - d. otherwise failing to avoid a collision with Decedent, a pedestrian.

32. As a direct, foreseeable, and proximate result of Defendant Diaz's negligence, Decedent died.

33. As a direct, foreseeable, and proximate result of Defendant Diaz's negligence, the surviving natural persons lost the support and services of Decedent, the amount of Decedent's probable income and the replacement value of Decedent's services, loss of the Decedent's companionship, mental pain and suffering, and other expenses due to the the Decedent's death.

34. At all times material, Defendant Diaz was operating the 2014 Kenworth 310 tractor truck owned by Defendant FedEx Freight, with its full permission and therefore Defendant FedEx Freight is additionally liable for any negligence of Defendant Diaz, at the time in question under the dangerous instrumentality doctrine.

WHEREFORE, Plaintiff, Elizabeth Cotter, as Personal Representative of the Estate of David H. Cotter, Deceased, respectfully requests that this Court enter judgment against Defendant Peter N. Diaz for compensatory damages, including interest, prejudgment interest, costs, reasonable attorney's fees, and further relief as this Court deems fair and just.

COUNT II - VICARIOUS LIABILITY
PLAINTIFF AGAINST DEFENDANT FEDEX FREIGHT

35. Plaintiff incorporates all allegations contained in paragraphs 1 through 26, as if set out fully herein.

36. As the operator of an automobile in Florida, Defendant Diaz had a legal duty to exercise due care in avoiding collisions with pedestrians such as Decedent. Fla. Stat. § 316.130(15).

37. Defendant Diaz breached his duty of due care by:

- a. by failing to slow and stop his vehicle when he saw Decedent, a pedestrian, near his lane as required by 316.130(15);
- b. by driving his vehicle in a careless manner;
- c. by violating the traffic control laws of the State of Florida; and
- d. by otherwise failing to avoid a collision with Decedent, a pedestrian, when he admitted that he saw Decedent from a distance, and could have, should have done so.

38. As a direct, foreseeable, and proximate result of Defendant Diaz's negligence, Decedent died.

39. As a direct, foreseeable, and proximate result of Defendant Diaz's negligence, the surviving natural persons lost the support and services of Decedent, the amount of Decedent's probable income and the replacement value of Decedent's services, loss of the Decedent's companionship, mental pain and suffering, and other expenses due to the the Decedent's death.

40. At all times material, Defendant Diaz was operating the 2014 Kenworth 310 tractor truck owned by Defendant FedEx Freight, with its full permission and therefore Defendant FedEx Freight is vicariously liable for any negligence of Defendant Diaz, at the time in question under the dangerous instrumentality doctrine.

41. At all times material, Defendant Diaz was employed by Defendant FedEx Freight, and at the time of the collision with David Cotter, Defendant Diaz was acting within the scope of his employment.

WHEREFORE, Plaintiff, Elizabeth Cotter, as Personal Representative of the Estate of David H. Cotter, Deceased, respectfully requests that this Court enter judgment against Defendant FedEx Freight, Inc. as vicariously liable for compensatory damages, including interest, prejudgment interest, costs, reasonable attorney's fees, and further relief as this Court deems fair and just.

COUNT III - DEFAMATION
PLAINTIFF AGAINST DEFENDANTS DIAZ AND FEDEX FREIGHT

42. Plaintiff incorporates all allegations contained in paragraphs 1 through 26, as if set out fully herein.

43. Defendant Diaz communicated to local authorities that David Cotter committed suicide by running across multiple lanes of traffic and into Defendant Diaz's motor vehicle.

44. The statements made by Defendant Diaz were false as David Cotter, deceased, did not commit suicide, and was hit as a result of Defendant Diaz's own negligence.

45. At the time of making the statement to the local authorities, Defendant Diaz knew that his statements were false.

46. Defendant FedEx Freight was (and still is) in possession of dash cam footage which shows the falsity of Defendant Diaz's statements.

47. Defendant FedEx Freight was aware of the false statements made by Defendant Diaz but did not turn over such evidence to the local authorities in an effort to support Defendant Diaz's statements, thus taking on Defendant Diaz's statements as its own.

48. As a result of Defendant Diaz's statements and Defendant FedEx Freight's omissions in support of such statements, the local authorities have concluded that David Cotter committed suicide, which has resulted in currently ongoing litigation against his estate, mental and emotional distress to his friends and family, and an overall negative impact on his status within the local community.

49. The false statement and representation that David Cotter committed suicide is defamatory in that it has harmed his reputation, has lowered his estate and memory in the estimation of the community, and has deterred third parties from associating or dealing with Cotter's estate or immediate family.

50. Additionally, suicide is a crime recognized at common law, and so Defendant Diaz and Defendant FedEx Freight's representations are defamatory *per se*.

WHEREFORE, Plaintiff, Elizabeth Cotter, as Personal Representative of the Estate of David H. Cotter, Deceased, respectfully requests that this Court enter judgment against Defendant Peter N. Diaz and Defendant FedEx Freight, Inc. for defamation, damages, and further relief as this Court deems fair and just.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

Respectfully Submitted,

/s/ Joseph F. Southron

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