

Kosciusko Superior Court 4  
) **IN THE KOSCIUSKO COUNTY**  
) **SUPERIOR COURT**  
) 43D04-2211-CT-000074  
) **SITTING IN WARSAW, INDIANA**

**STATE OF INDIANA**  
**COUNTY OF KOSCIUSKO**

JEFFREY ROGERS, Individually and as )  
Father and Next Friend of JACK ROGERS, )  
a minor, and LYNN ROGERS, Individually, )  
and as Mother and Next Friend of JACK )  
ROGERS, a minor, )

JAMES WALSH, Individually and as Father )  
and Next Friend of JONATHAN WALSH, )  
a minor, and SUSAN WALSH, Individually, )  
and as Mother and Next Friend of )  
JONATHAN WALSH, a minor, )

MICHAEL BIDEN, Individually and as Father )  
and Next Friend of SEAN BIDEN, )  
a minor, and LEANNE BIDEN, Individually, )  
and as Mother and Next Friend of SEAN )  
BIDEN, a minor, )

SCOTT GILBERTSON, Individually and as )  
Father and Next Friend of KIEFER )  
GILBERTSON a minor, and BETSY )  
NELSON, Individually, and as Mother )  
and Next Friend of KIEFER GILBERTSON, )  
a minor, )

CHRISTOPHER MURPHY, Individually and as )  
Father and Next Friend of EMMETT MURPHY, )  
a minor, and EILEEN MURPHY, Individually, )  
and as Mother and Next Friend of EMMETT )  
MUPRHY, a minor, )

KARL D’CUNHA, Individually and as )  
Father and Next Friend of KRISTIANO )  
D’CUNHA, a minor, and VANESSA )  
D’CUNHA, Individually, and as Mother and )  
Next Friend of KRISTIANO D’CUNHA, )  
a minor, )

ANIL RAM, Individually and as Father and )  
Next Friend of ARI RAM, a minor, and )  
JOANNA RAM, Individually, and as Mother )

and Next Friend of ARI RAM, a minor, )  
)  
ANDREW JOA, Individually and as Father and )  
Next Friend of LUCAS JOA, a minor, and )  
HEATHER JOA, Individually, and as Mother )  
and Next Friend of LUCAS JOA, a minor, )  
)  
ROSS LISSUZZO, Individually and as Father )  
and Next Friend of NIC LISSUZZO, a minor, )  
and SUSAN LISSUZZO, Individually, and as )  
Mother and Next Friend of NIC LISSUZZO, )  
a minor, )  
)  
RICHARD BOSSERT, Individually and as )  
Father and Next Friend of JACKSON )  
BOSSERT a minor, and NICOLE BOSSERT, )  
Individually, and as Mother and Next Friend of )  
JACKSON BOSSERT, a minor, )  
)  
WILLIAM ALTMAN, Individually and as )  
Father and Next Friend of PATRICK ALTMAN,) )  
a minor, and JANE ALTMAN, Individually, )  
and as Mother and Next Friend of PATRICK )  
ALTMAN, a minor, )  
)  
JAMES G. DOHERTY, Individually and as )  
Father and Next Friend of JAMES C. )  
DOHERTY, a minor, and ANNE DOHERTY, )  
Individually, and as Mother and Next Friend of )  
JAMES C. DOHERTY, a minor, )  
)  
NANCY TEMPLE, Individually and as Mother )  
and Next Friend of SAMUEL REIF, a minor, )  
)  
ANNE MURPHY, Individually and as Mother )  
and Next Friend of JOHN WILLIAM LYONS, )  
a minor, )  
)  
JEFFREY COOK, Individually and as Father )  
and Next Friend of ALEXANDER COOK, )  
a minor, and WENDY COOK, Individually, and )  
as Mother and Next Friend of ALEXANDER )  
COOK, a minor, )  
)  
MARK BERGMANN, Individually and as )  
Father and Next Friend of GUS BERGMANN, )  
a minor, and CATHY BERGMANN, )

Individually, and as Mother and Next Friend	)	
of GUS BERGMANN, a minor,	)	
	)	
MICHAEL RIGITANO, and	)	
RYAN HARALDSEN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No.:
	)	
N & V TRUCKING EXPRESS LLC,	)	<i>Plaintiffs Demand a Trial By Jury</i>
B&W CARTAGE COMPANY, INC.,	)	
B & W CARTAGE, INC.,	)	
B & W INTERNATIONAL, INC.,	)	
VICTOR SANTOS,	)	
	)	
Defendants.	)	

**COMPLAINT AT LAW**

Plaintiffs, JEFFREY ROGERS, Individually and as Father and Next Friend of JACK ROGERS, a minor, and LYNN ROGERS, Individually and as Mother and Next Friend of JACK ROGERS, a minor, JAMES WALSH, Individually and as Father and Next Friend of JONATHAN WALSH, a minor, and SUSAN WALSH, Individually and as Mother and Next Friend of JONATHAN WALSH, a minor, MICHAEL BIDEN, Individually and as Father and Next Friend of SEAN BIDEN, a minor, and LEANNE BIDEN, Individually and as Mother and Next Friend of SEAN BIDEN, a minor, SCOTT GILBERTSON, Individually and as Father and Next Friend of KIEFER GILBERTSON, a minor, and BETSY NELSON, Individually and as Mother and Next Friend of KIEFER GILBERTSON, a minor, CHRISTOPHER MURPHY, Individually and as Father and Next Friend of EMMETT MURPHY, a minor, and EILEEN MURPHY, Individually and as Mother and Next Friend of EMMETT MURPHY, a minor, KARL D’CUNHA, Individually and as Father and Next Friend of KRISTIANO D’CUNHA, a minor, and VANESSA D’CUNHA, Individually and as Mother and Next Friend of KRISTIANO D’CUNHA, a minor, ANIL RAM, Individually and as Mother and Next Friend of ARI RAM, a minor, and JOANNA RAM,

Individually and as Mother and Next Friend of ARI RAM, a minor, ANDREW JOA, Individually and as Father and Next Friend of LUCAS JOA, a minor, and HEATHER JOA, Individually and as Mother and Next Friend of LUCAS JOA, a minor, ROSS LISSUZZO, Individually and as Father and Next Friend of NIC LISSUZZO, a minor, and SUSAN LISSUZZO, Individually and as Mother and Next Friend of NIC LISSUZZO, a minor, RICHARD BOSSERT, Individually and as Father and Next Friend of JACKSON BOSSERT, a minor, and NICOLE BOSSERT, Individually and as Mother and Next Friend of JACKSON BOSSERT, a minor, WILLIAM ALTMAN, Individually and as Father and Next Friend of PATRICK ALTMAN, a minor, and JANE ALTMAN, Individually and as Mother and Next Friend of PATRICK ALTMAN, a minor, JAMES G. DOHERTY, Individually and as Father and Next Friend of JAMES C. DOHERTY, a minor, and ANNE DOHERTY, Individually and as Mother and Next Friend of JAMES C. DOHERTY, a minor, NANCY TEMPLE, Individually and as Mother and Next Friend of SAMUEL REIF, a minor, ANNE MURPHY, Individually and as Mother and Next Friend of JOHN WILLIAM LYONS, a minor, JEFFREY COOK, Individually and as Father and Next Friend of ALEXANDER COOK, a minor, and WENDY COOK, Individually and as Mother and Next Friend of ALEXANDER COOK, a minor, MARK BERGMANN, Individually and as Father and Next Friend of GUS BERGMANN, a minor, and CATHY BERGMANN, Individually and as Mother and Next Friend of GUS BERGMANN, a minor, MICHAEL RIGITANO, and RYAN HARALDSEN, by and through their attorneys, MIYAKE LAW LLC and CAVANAGH LAW GROUP, *Pro Hoc Vice* pending, complaining of Defendants, N & V TRUCKING EXPRESS LLC, B&W CARTAGE COMPANY, INC., B & W CARTAGE, INC., B & W INTERNATIONAL, INC., and VICTOR SANTOS, state as follows:

**FACTS COMMON TO ALL COUNTS**

1. At all times relevant herein, Plaintiffs were residents of Illinois.

2. At all times relevant herein, Defendant N & V TRUCKING EXPRESS LLC, was a New Jersey Corporation with offices in Bloomfield, New Jersey, and operated semi-tractor-trailers in Kosciusko County, State of Indiana.

3. At all times relevant herein, Defendants B&W CARTAGE COMPANY, INC., B & W CARTAGE, INC., B & W INTERNATIONAL, INC., were Michigan Corporations with offices in Taylor, Michigan, and operated semi-tractor-trailers in Kosciusko County, State of Indiana.

4. At all times relevant herein, Defendant VICTOR SANTOS was a resident of the State of New York and was operating a semi-tractor trailer combination in Kosciusko County, State of Indiana.

5. On November 12, 2022, Plaintiffs' minors were passengers in a school bus that was making a lawful left-turn onto U.S. 30 at its intersection with Center Street in Warsaw, Indiana.

6. On November 12, 2022, Defendant VICTOR SANTOS was operating a semi-tractor trailer traveling westbound on U.S. 30 at its intersection with Center Street in Warsaw, Indiana.

7. On November 12, 2022, Defendant VICTOR SANTOS disregarded a red light at the intersection of U.S. 30 and Center Street in Warsaw, Indiana, striking the school bus which Plaintiffs' minors occupied.

8. On November 12, 2022, VICTOR SANTOS was an agent and/or employee of N & V TRUCKING EXPRESS LLC, B&W CARTAGE COMPANY, INC., B & W CARTAGE, INC., and/or B & W INTERNATIONAL, INC., and was acting in the course and scope of his agency and/or employment.

9. On November 12, 2022, VICTOR SANTOS was operating a vehicle owned and/or leased by, and bearing the logo of, N & V TRUCKING EXPRESS LLC, B&W CARTAGE

COMPANY, INC., B & W CARTAGE, INC., and B & W INTERNATIONAL, INC.

10. On November 12, 2022, VICTOR SANTOS was a statutory employee of N & V TRUCKING EXPRESS LLC, B&W CARTAGE COMPANY, INC., B & W CARTAGE, INC., and/or B & W INTERNATIONAL, INC. pursuant to 49 CFR 390.5.

11. On November 12, 2022, N & V TRUCKING EXPRESS LLC, B&W CARTAGE COMPANY, INC., B & W CARTAGE, INC., and/or B & W INTERNATIONAL, INC., were vicariously liable for the acts and/or omissions of VICTOR SANTOS.

12. On November 12, 2022, N & V TRUCKING EXPRESS LLC, B&W CARTAGE COMPANY, INC., B & W CARTAGE, INC., and/or B & W INTERNATIONAL, INC., negligently entrusted the semi-tractor-trailer it owned to VICTOR SANTOS.

#### **COUNT I – NEGLIGENCE**

13. Plaintiffs reallege paragraphs 1-12 herein.

14. On November 12, 2022, Defendants N & V TRUCKING EXPRESS LLC, B&W CARTAGE COMPANY, INC., B & W CARTAGE, INC., B & W INTERNATIONAL, INC., by and through their duly authorized agent and/or employee VICTOR SANTOS, and each of them, and Defendant, VICTOR SANTOS, individually, owed Plaintiffs' minors and others on the roadway a duty to use reasonable care in the operation of the semi-tractor trailer so as to avoid causing injury and harm.

15. On November 12, 2022, Defendants N & V TRUCKING EXPRESS LLC, B&W CARTAGE COMPANY, INC., B & W CARTAGE, INC., B & W INTERNATIONAL, INC., by and through their duly authorized agent and/or employee VICTOR SANTOS, and each of them, and Defendant, VICTOR SANTOS, individually, breached the foregoing duty and were negligent in one or more of the following ways:

a. Failed to keep and maintain a proper lookout for other vehicles on the roadway;

- b. Failed to maintain control of the semi-tractor-trailer in order to avoid a collision;
- c. Failed to timely apply the brakes to avoid a collision;
- d. Disregarded a traffic control device in violation of Ind. Code Ann. § 9-21-8-32;
- e. Failed to yield the right of way in violation of Ind. Code. Ann. § 9-21-8-31;
- f. Failed to use the same care and caution that a reasonably prudent person would have used under the same or substantially similar circumstances.

16. That as a further direct and proximate result of the negligence of Defendants, N & V TRUCKING EXPRESS LLC, B&W CARTAGE COMPANY, INC., B & W CARTAGE, INC., and B & W INTERNATIONAL, INC., by and through their duly authorized agent and/or employee VICTOR SANTOS, and each of them, and Defendant, VICTOR SANTOS, individually, Plaintiffs sustained personal injuries, some of which are permanent, incurred and will incur medical, hospital, pharmaceutical, diagnostic, and therapeutic expenses; suffered and will suffer physical pain, other injuries and damages of a personal and pecuniary nature.

WHEREFORE, the Plaintiffs demand judgment against Defendants, N & V TRUCKING EXPRESS LLC, B&W CARTAGE COMPANY, INC., B & W CARTAGE, INC., B & W INTERNATIONAL, INC., and VICTOR SANTOS, for all injuries, expenses, and damages pertaining to or relating to the incident described herein, pre-judgment interests, costs of this action, and for all other just and proper relief in the premises. The Plaintiffs further demand trial by jury.

### **COUNT II – PUNITIVE DAMAGES**

17. Plaintiffs reallege paragraphs 1-16 herein.

18. On November 12, 2022, following the collision, Defendant VICTOR SANTOS took a portable breath test with a result of .13% blood alcohol concentration.

19. On November 12, 2022, the Defendants, N & V TRUCKING EXPRESS LLC,

B&W CARTAGE COMPANY, INC., B & W CARTAGE, INC., and B & W INTERNATIONAL, INC., by and through their duly authorized agent and/or employee VICTOR SANTOS, and each of them, and Defendant, VICTOR SANTOS, individually, were then and there guilty of willful and wanton conduct by doing, or failed to do one or more of the following acts:

- a. Consumed excessive amounts of alcohol knowing that he was going to operate a semi-tractor-trailer;
- b. Knowingly operated a semi-tractor-trailer while under the influence of alcohol and endangering other persons in violation of Ind. Code Ann . § 9-30-5-2;
- c. Knowing that he was intoxicated persisted to operate a semi-tractor-trailer while inattentive.

20. As a result of the Defendants' willful and wanton conduct the Plaintiffs were caused to suffer painful debilitating physical injuries and limitation of the Plaintiffs' normal activities. The Plaintiffs have expended, become indebted and liable for medical and hospital expenses and shall in the future experience pain, suffering, disability, and loss of enjoyment of life all due to the willful and wanton conduct of Defendants.

WHEREFORE, the Plaintiffs ask for judgment for punitive damages against Defendants, N & V TRUCKING EXPRESS LLC, B&W CARTAGE COMPANY, INC., B & W CARTAGE, INC., B & W INTERNATIONAL, INC., and VICTOR SANTOS, in an amount that is fair and reasonable in the premises. The Plaintiffs further demand trial by jury.

### **COUNT III – NEGLIGENCE PER SE**

21. Plaintiffs reallege paragraphs 1-20 herein.

22. The Defendants are negligent *per se* for VICTOR SANTOS operating a semi-tractor-trailer under the influence of alcohol in contravention of Indiana Code Section 9-30-5 *et. seq.*

23. The Defendants' violation of certain statutes, codes, and/or ordinances including Indiana Code Section 9-30-5 *et. seq.*, constitutes negligence *per se*.



24. As a direct and proximate result of the Defendants' negligence *per se*, the Plaintiffs sustained the injuries, damages, and losses as set forth above.

25. The Defendants' conduct while operating a semi-tractor-trailer while intoxicated, coupled with their reckless and careless conduct demonstrated a total disregard for the safety of Plaintiff and other citizens, and constitutes criminal conduct, which subjects them to a claim for punitive and/or exemplary damages.

WHEREFORE, the Plaintiffs, request that judgment be entered against Defendants, N & V TRUCKING EXPRESS LLC, B&W CARTAGE COMPANY, INC., B & W CARTAGE, INC., B & W INTERNATIONAL, INC., and VICTOR SANTOS, in an amount to fairly compensate them for the injuries as set forth above, court costs, statutory interest from the date this cause of action accrued or as otherwise permitted under Indiana law and for such other and further relief as this Court deems just and proper. The Plaintiffs further demand trial by jury.

**JURY DEMAND**

Plaintiffs, by counsel, request trial by jury.

Respectfully submitted,

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