

CAUSE NO. \_\_\_\_\_

MELODY JOHNSON & ESTATE OF	§	IN THE DISTRICT COURT
MARIYA JOHNSON,	§	
<i>Plaintiff,</i>	§	
	§	HARRIS COUNTY TEXAS
V.	§	
	§	
HOUSTON INDEPENDENT SCHOOL	§	____ <sup>th</sup> JUDICIAL DISTRICT
DISTRICT & INTERNATIONAL	§	
TRUCK AND ENGINE CORP.	§	
<i>Defendant.</i>	§	<b>JURY TRIAL DEMANDED</b>

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs, Melody Johnson, individually and on behalf of the Estate of Mariya Johnson, complain of Defendant Houston Independent School District (“HISD”) and International Truck and Engine Corp. (“International”) and for cause of action would respectfully show this Honorable Court the following:

**I.**

On September 15, 2015, at approximately 7:00 a.m., Mariya Johnson was driving with her classmates from Furr High School in a HISD school bus manufactured by International Truck and Engine Corp. along the South Loop in Houston, Texas. After a series of tragic events, the HISD school bus lost control and plunged from the South Loop onto the eastbound frontage road of the South Loop near Telephone Road. The school bus was essentially destroyed. Mariya Johnson and another classmate were killed. Mariya’s death arose from the negligent acts of the HISD bus driver and International.

## **II.**

Plaintiffs intend to conduct discovery under Level 2 of the Texas Rules of Civil Procedure Rule 190.3 and affirmatively pleads that he seeks monetary relief aggregating more than \$100,000.

## **III.**

Plaintiffs are residents of Harris County, Texas.

## **IV.**

Defendant, HISD, is a school district in the State of Texas, and it is a “governmental unit” as defined by the Texas Civil Practice and Remedies Code, Sec. 101.001(3), 101.051. HISD may be served with process by serving HISD’s Superintendent, Dr. Terry B. Grier at 4400 West 18<sup>th</sup> Street, Houston, Texas 77092.

International designs, manufactures, tests, assembles, sells, distributes, and places International model vehicles and their component parts into the stream of commerce, such as the subject vehicle involved in the incident made the basis of this suit. It also tailors its products to the tastes and preferences of consumers in Texas and elsewhere. International may be served with process by serving its registered agent in the state of Texas, CT Corp. System, via registered mail at 1999 Bryan St., Ste. 900, Dallas, Texas 75201.

International conducts business in Texas, and derives significant revenue from its activities in Texas. International has entered into contracts to be performed in Texas. International has sold and/or distributed its vehicles to Texas dealerships and/or residents. International has engaged in conduct which either allows or promotes business transactions in Texas. International has advertised and marketed in Texas and to Texas residents, whether in the form of television advertisements, magazine advertisements, newspaper advertisements, internet advertisements, or

other forms of advertising and/or marketing. Advertisements and marketing materials were made to Texas residents to entice them to purchase International vehicles and services. The website that International runs for the company has repeated online contacts with Texas residents over the internet, and the website contains interactive elements which allows sharing of information, all of which is designed to get Texas residents to purchase International products. Employees, officers, and/or directors of International have visited Texas.

#### **V.**

This court has jurisdiction over the lawsuit because the subject matter in controversy is within the jurisdictional limits of this court.

#### **VI.**

Venue is proper in Harris County, Texas. Specifically, venue is proper in Harris County under the general venue rule because all of the events in question occurred in Harris County.

#### **VII.**

##### **Strict Products Liability as to International**

It was entirely foreseeable to and well known by Defendant that accidents and incidents involving its vehicles, such as what occurred herein, would on occasion take place during the normal and ordinary use of the vehicle.

The injuries and the deaths complained of occurred because the vehicle in question was not reasonably crashworthy, and was not reasonably fit for unintended, but clearly foreseeable, accidents. The vehicle in question was unreasonably dangerous in the event it should be involved in an incident such as occurred herein.

Texas has long recognized the doctrine of vehicle crashworthiness (sometimes known as “second collision” or “enhanced injury”) which holds that an automobile manufacturer can be

100% liable where a defect in the design or manufacture of a vehicle does not cause the original accident, but instead where the vehicle itself does not adequately protect the occupant or where a defect with the vehicle causes an additional injury. *See Turner v. General Motors Corp.*, 584 S.W.2d 844, 848 (Tex. 1979). This case is about whether International adequately protected Mariya Johnson after the accident sequence was initiated.

Vehicle manufacturers have known for decades and admitted that there is a distinction between the cause of an accident versus the cause of an injury.

Indeed, crashworthiness is the science of preventing or minimizing injuries or death following an accident through the use of a vehicle's various safety systems. There are five (5) recognized crashworthiness principles in the automobile industry/throughout the world. They are as follows:

1. maintain survival space;
2. provide proper restraint throughout the entire accident;
3. prevent ejection;
4. distribute and channel energy; and
5. prevent post crash fires.

When the National Highway Traffic Safety Administration (NHTSA) created the Federal Motor Vehicle Safety Standards (FMVSS) in the late 1960's, the pre-amble to the safety standards included a similar definition of crashworthiness. Crashworthiness safety systems in a vehicle must work together like links in a safety chain. If one link fails, the whole chain fails. For example, in a rollover, if the roof collapses such that no survival space is left, it does not matter what kind of restraint system, glass, fuel system, or energy absorbing system is used, because these systems have been rendered moot. Or, if, in a rollover, a vehicle's roof does not collapse but

the seatbelt spools out to a degree allowing the occupant to be partially ejected through the side glass, the vehicle's safety systems have failed.

Studies from the National Highway Traffic Safety Administration (NHTSA) state that once a person is ejected from a vehicle there is at least a 13 times greater risk of serious injury or death.

The vehicle industry has known for decades that 3-point seatbelts are inherently safer than only lap belts, and that they help to prevent ejection better.

Yet, the subject bus only had lap belts and not 3-point seat belts, making the bus defective and unreasonably dangerous.

As noted earlier, this was a side collision. Side collisions are the second most frequent source of injury and fatality, after frontal collisions. Side impact design improvements have been successful in the automotive industry with, for example, strengthened vehicle side structures and transverse structural elements that allow load to be transferred to the opposite side of the vehicle.

Good side structural design requires, among other things, attention to joints and attachments. Each element in the vehicle structure feeds, what are primarily tensile forces, to the latches, hinges and pillar joints. Each of these attachments needs to be held in place by the main vehicle structure.

Automakers know through various devices such as computer simulations that a stiff side structure provides good occupant protection in a side impact collision without any additional risk.

The side structure on the subject vehicle is weak, inferior, and inadequate in terms of maintaining survival space. As such, the side structure is defective and unreasonably dangerous because it failed to maintain survival space. The loss of survival space violates principles of crashworthiness. The loss of survival space rendered the other safety systems ineffective.

In using the risk versus utility analysis to the side structure, the risks of serious injuries in side impacts have been known for decades. Further, there is no utility to a vehicle's side structure that fails to maintain survival space, distribute energy, and properly channel forces. Plaintiff would not have had fatal injuries had the vehicle been equipped with a properly designed structure.

Unfortunately, Defendant International treated the minimum federal safety standards as a ceiling on safety performance. Furthermore, with respect to crashworthiness principles, Defendant designed, manufactured, marketed, distributed, assembled, and tested said vehicle in question to be unreasonably dangerous and defective within the meaning of Section 402(A) Restatement (Second) Torts, in that the vehicle was unreasonably dangerous as designed, manufactured, marketed, distributed, assembled, and tested because Defendant knew and/or should have known of the following, non-exhaustive list of defects:

- a. the vehicle failed to provide adequate occupant protection because of improper restraint;
- b. the vehicle failed to provide proper restraint throughout the entire accident sequence;
- c. the vehicle's structure was weak, inferior, and unreasonably dangerous;
- d. Defendant failed to conduct adequate testing; and/or
- e. Defendant failed to conduct proper engineering analysis.

At this point, Defendant International is in possession of all the technical materials and other documents regarding the design, manufacture, and testing (if any) of the vehicle in question. Defendant is also in possession of what, if any, engineering analysis and testing it performed.

### **Negligence of International**

In designing a vehicle, efforts should be made by manufacturers to identify potential risks, hazards, and/or dangers that can lead to serious injury or death. Once potential risks, hazards, and/or dangers are identified, then the potential risks, hazards, or dangers should be eliminated if

possible. If the potential risks, hazards, and/or dangers can't be eliminated, then they should be guarded against.

If the potential risks, hazards, and/or dangers can't be eliminated or guarded against, they should at least be warned about. Vehicle manufacturers have known this for decades, and they also know that they have to consider foreseeable use and misuse when they design vehicles.

Furthermore, vehicle engineers have to hold paramount the health, safety, and welfare of the public and consumers, and they must be knowledgeable about the exposure of the types of accidents and injuries that are occurring with their vehicles out in the real world.

A company that does not conduct a proper engineering analysis that would help it to identify potential risk, hazards, and/or dangers that could seriously injure someone is negligent.

Furthermore, it is important to test vehicles properly before they are sold to the public. Not doing so constitutes negligence. International engineers should have used one of the many available techniques to analyze the safety of the subject vehicle and its structure and restraint system in a side impact scenario. Some of these engineering techniques include DFMA (Design Failure Mode Effects Analysis), FMEA (Failure Mode and Effects Analysis), fault tree analysis, root cause analysis, and risk hazard analysis.

So far, there is no evidence which has been presented which shows that any engineering triad analysis, fault tree analysis, DFMA, root cause analysis or by whatever name called that was conducted by International. This omission is important because this is the primary role and responsibility of an engineer. The lack of engineering analysis and poor decisions about side impact led to a defective vehicle being introduced into the stream of commerce. International was aware of the danger of foreseeable side impact accidents, however they were negligent in their decision making for performance testing for side impact accidents. Its poor design decisions

affected the ability to use advanced engineering tools such as FEA to ensure a properly designed restraint system.

International was negligent for not conducting proper engineering analysis, target setting, and testing.

Defendant owed a duty to Plaintiffs to perform a proper engineering analysis and to properly test its vehicles. Defendant breached said duty.

The foregoing acts and/or omissions of Defendant were a producing, direct, and/or proximate cause of Plaintiffs' injuries.

The foregoing acts and/or omissions of Defendant were a producing, direct, and/or proximate cause of Plaintiffs' damages.

### **Negligence of HISD**

Defendant, and its employee driver, had a duty to exercise ordinary care and operate the school bus reasonably and prudently. Specifically, Defendant was travelling too quickly, too close to the guard rail, and negligently drove into the guard rail; as a result of unfortunate events, Defendant struck the guard rail and eventually flipped over the guardrail. Defendant's negligence was a proximate cause of the Plaintiff's injuries and death. Defendant breached the duty of reasonable care in one or more of the following ways:

- a. Failing to timely apply the brakes;
- b. Failing to maintain a proper lookout;
- c. Failing to maintain a proper speed;
- d. Failing to control speed;
- e. Failing to keep the vehicle under proper control;
- f. Failing to maintain an assured clear distance between the school bus and the guard rail;

- g. Driving the vehicle at a rate of speed greater than that at which an ordinary and prudent person would have driven under the same or similar circumstance; and
- h. Failing to operate the vehicle with appropriate regard for the safety of all persons.

**Negligence Per Se as to HISD**

Defendant violated §§545.351, 545.401; and 545.413 of the Texas Transportation Code. Plaintiffs are within the class of people sought to be protected by these statutes. Plaintiffs' injuries are the type the statutes were designed to protect. The statutes are ones for which tort liability may be imposed. The Defendant's breach of the statutory duties proximately caused Plaintiff's injuries.

**VIII.**

As a proximate cause of Defendant's negligence, Plaintiffs suffered severe injuries, including the death of Mariya Johnson. Plaintiffs seek unliquidated damages in an amount that is within the jurisdictional limits of the court, including but not limited to, past and future medical care, past and future pain and suffering, and past and future mental anguish. Plaintiffs' injuries were proximately caused by the operation of a motor driven vehicle. Additionally, the Defendant and its employees would have been personally liable but for the Texas Tort Claims Act. Further, there is no exception to the waiver of immunity that precludes the claim.

**IX.**

All conditions precedent have been performed or have occurred.

**X.**

Plaintiff respectfully demands a jury trial and tenders the appropriate fee with this petition.

## **XI.**

This action is brought pursuant to §§ 71.001 - 71.012 of the Texas Civil Practice and Remedies Code. For these reasons, Plaintiff asks that Defendants be cited to appear and answer and that Plaintiff have judgment against Defendant in an amount to exceed \$1,000,000.00 for the following damages:

- a. Physical pain and suffering in the past and future;
- b. Mental anguish in the past and future;
- c. Disfigurement in the past and future;
- d. Physical impairment in the past and future;
- e. Medical expenses in the past and future;
- f. Loss of consortium and companionship in the past and future;
- g. Loss of earning capacity in the past and future;
- h. Loss of household services in the past and future;
- i. Punitive damages in such amount as may be found proper and just under the facts and circumstances as determined by the jury;
- j. Costs of suit;
- k. Prejudgment and postjudgment interest as provided by law; and
- l. All other relief, in law and in equity, to which Plaintiff may be justly entitled.

Additionally, Plaintiffs seek all damages allowed for a parent in a wrongful death action. Plaintiffs seek all damages allowed for an action brought on behalf of Mariya Johnson. Plaintiffs Melody Johnson and the Estate of Mariya Johnson seek all survival damages allowed by Texas law. Plaintiffs seek exemplary damages under the Survival Statute and as part of the wrongful death

action. Plaintiffs seek funeral expenses under the Survival Statute and as part of the wrongful death action. Plaintiffs seek any estate fees it is entitled to.

## **XII.**

Under Texas Rule of Civil Procedure 194, Plaintiff requests that all Defendant disclose, within 50 days of service of this request, the information or material described in Rule 194.2.

Respectfully submitted,

### **THE BUZBEE LAW FIRM**

By: /s/ Anthony G. Buzbee

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**ATTORNEYS FOR PLAINTIFF**

CIVIL PROCESS REQUEST

FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED

CASE NUMBER: \_\_\_\_\_ CURRENT COURT: \_\_\_\_\_

TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): Plaintiff's Original Petition

FILE DATE OF MOTION: November 16, 2015
Month/ Day/ Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

1. NAME: Houston Independent School District
ADDRESS: 4400 West 18th Street, Houston, TX 77092
AGENT, (if applicable): \_\_\_\_\_

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): Citation

SERVICE BY (check one):

- ATTORNEY PICK-UP
CIVIL PROCESS SERVER - Authorized Person to Pick-up: Easy Serve
MAIL
PUBLICATION:
OTHER, explain

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\*\*\*\*

2. NAME: International Truck and Engine Corp.
ADDRESS: 1999 Bryan Street, Suite 900, Dallas, TX 75201
AGENT, (if applicable): \_\_\_\_\_

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): Citation

SERVICE BY (check one):

- ATTORNEY PICK-UP
CIVIL PROCESS SERVER - Authorized Person to Pick-up: Easy Serve
MAIL
PUBLICATION:
OTHER, explain

ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:

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