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Attorneys for Plaintiffs

ANTHONY ELLIS and QUWANJAY ELLIS,
Plaintiffs,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO.:

vs.

Z&D TOUR, INC. and JOHN DOES 1-10.

COMPLAINT FOR DAMAGES

COME NOW Plaintiffs Anthony Ellis and Quwanjay Ellis (“Plaintiffs”), by and through their undersigned counsel of record, to bring this action against Defendant Z&D Tour, Inc. (“Z&D” or “Defendant”) and allege as follows:

NATURE OF THE ACTION

1. This personal injury action seeks recovery for the pain and suffering, medical expenses, lost wages, mental anguish, emotional distress, permanent impairment, loss of use, loss of enjoyment, loss of opportunity, loss of earning potential, and other significant and continuing past, present, and future compensatory damages sustained by Plaintiffs Anthony and Quwanjay Ellis as well as punitive damages arising from their involvement in and severe injuries caused by the crash of a full size tour bus (hereinafter “the Incident Tour Bus”) owned and operated exclusively by Defendant Z&D and carelessly and recklessly driven by Defendant’s employee, Shuang Qing Feng (the “Driver”), on the early morning of January 5, 2020.

2. As a direct and proximate result of Defendant's negligent and grossly negligent conduct or omissions, the Driver was incapacitated and/or otherwise not in a condition to be present, qualified, employed and/or driving the Incident Tour Bus when he veered on the Pennsylvania Turnpike (Interstates I-70 and I-76), near Mount Pleasant Township, Pennsylvania, causing it to hit an embankment and topple on its side. The bus started a chain reaction which resulted in it being hit by two tractor trailers and causing additional vehicles to collide.

3. As a result of the accident, Plaintiffs Anthony and Quwanjay Ellis, and a number of other passengers on the bus, were violently thrown from their seats and seriously injured, and but for Defendant's tortious acts and omissions, Plaintiffs injuries would not have occurred and/or could have been avoided that day. This is the Incident that forms the basis of this Complaint, and Plaintiffs seek actual, consequential, and punitive damages to halt and deter such conduct from taking place in the future and as just compensation for those substantial and life-altering injuries and damages sustained.

THE PARTIES, JURISDICTION AND VENUE

4. At all relevant times described herein, Plaintiff Anthony Ellis has been a citizen and resident of Irvington, New Jersey, residing at 21 Argyle Terrace, Irvington, New Jersey.

5. At all relevant times described herein, Plaintiff Quwanjay Ellis has been a citizen of the country of Jamaica, residing in Irvington, New Jersey, at 21 Argyle Terrace, Irvington, New Jersey.

6. At all relevant times described herein, Defendant Z&D is and was a charter tour bus company organized, operating, and incorporated in Rockaway, New Jersey as of about June 6, 2012.

7. At all relevant times described herein, the Incident Tour Bus at issue in this Complaint is and was a 57-passenger, 2005 Van Hool Motor Coach, insured by National Continental Insurance Company, and operated, and registered to Defendant Z&D.

8. At all relevant times described herein, Defendant Z&D is and was a New Jersey Corporation, with its principal place of business in Rockaway, New Jersey, whose registered agent is located at 350 Route 46 East, Rockaway, New Jersey, 07866. At all relevant times described herein, Defendant Z&D maintained systematic and continuous contacts with New Jersey and, in fact, is based in New Jersey, and therefore, jurisdiction is proper.

9. Defendant Does 1 through 10, inclusive, are individuals and/or business or corporate entities incorporated in and/or doing business in New Jersey whose true names and capacities are unknown to Plaintiffs who, therefore, sue such defendants by such fictitious names, and who will amend the Complaint to show the true names and capacities of each such Doe defendant when ascertained. Each such Doe defendant is legally responsible in some manner for the events, happenings and/or tortious and unlawful conduct that caused the injuries and damages alleged in the Complaint.

10. Venue of this action properly lies in this Court as both Plaintiffs are residents of Essex County, New Jersey.

CONDITIONS PRECEDENT

11. All conditions precedent to the filing of this action and to the Plaintiffs' right to the relief sought have occurred, have been performed, or have been excused.

FACTS COMMON TO ALL COUNTS

12. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth fully herein.

13. On the evening of January 4, 2020, at or about 2150 hours, Plaintiffs Anthony and Quwanjay Ellis boarded the Incident Tour Bus for transport from New York, New York to Columbus, Ohio, where Plaintiff Anthony Ellis worked and maintained an apartment.

14. Plaintiff Anthony Ellis paid cash for tickets he purchased for himself and Plaintiff Quwanjay Ellis on the evening of January 4, 2020, at the bus station located at 59 Canal Street in New York, New York. In purchasing the tickets Plaintiffs hired and entrusted Z&D and its employee, Shuang Qing Feng, to drive the Incident Tour Bus and transport Plaintiffs.

15. After having made only one (1) brief stop during the lengthy trip, at approximately 3:30 am, while descending a 3-percent slope on Interstate 70-76, the Incident Tour Bus veered from the travel lanes toward the median and onto the paved left shoulder. The Incident Tour Bus then veered toward the right, crossed all travel lanes and the right shoulder and collided with a steep earthen embankment.

16. The Incident Tour Bus then rolled onto its passenger side and slid to a stop. At final rest, the Incident Tour Bus stretched diagonally across the westbound lanes and shoulders with its underside facing oncoming traffic.

17. After the Incident Tour Bus came to rest, it was struck by a 2018 Freightliner Cascadia truck-tractor in combination with a semitrailer that was operated by FedEx Ground, that was traveling in the right lane (hereinafter the "FedEx Truck"). A second 2018 Freightliner Cascadia truck-trailer and semitrailer combination vehicle, operated by United Parcel Service (hereinafter "UPS Truck"), that was traveling in the inside westbound lane then struck both the FedEx Truck and the overturned Incident Tour Bus.

18. Approximately 30 minutes before the crash, Plaintiff Quwanjay Ellis, who was seated directly behind the Driver, observed that the Incident Tour Bus seemed to be traveling at faster

than normal speeds. Immediately preceding the accident, Plaintiff Quwanjay Ellis observed that the Driver started to lean toward the left and, as he leaned, the steering wheel of the bus turned in that direction. Plaintiff Quwanjay Ellis recalls hearing several passengers scream and the Driver almost immediately making a quick, startled, turn of the steering wheel causing the bus to make a sharp turn to the right.

19. As a result of the crash, the Driver, two passengers of the Incident Tour Bus, and the driver and co-driver of the UPS Truck died. Approximately 59 of the 61 passengers were injured as was the codriver of the FedEx truck.

20. Plaintiff Anthony Ellis, who was sitting in a passenger side first row seat, was thrown through the front window of the bus and was found some distance from where the bus had come to a stop. Among the injuries incurred as a result of the accident, Plaintiff Anthony Ellis sustained a broken neck, shoulder, and collarbone, and lacerations to his head and collar area with gruesome scarring. He underwent surgery and was required to have metal plates implanted in his neck, shoulder, and collarbone. He remains in an inpatient rehabilitation facility several hundred miles from his home because his current condition prevents him from being moved. He is receiving physical therapy and treatment but is unable to walk and has very limited movement.

21. Following the crash, Plaintiff Quwanjay Ellis, who was sitting in the first row directly behind the Driver, was able to climb through the area where the front window had been located. Upon exiting, Plaintiff Quwanjay Ellis was calling out and searching for his brother, but could not find him. He recalls injured passengers laying on the road as he walked from the bus to an area considered to be a safe distance from the crash site.

22. Plaintiff Quwanjay Ellis suffered injuries to his right elbow, right hand, both feet and his chest. He was transported to nearby Frick Hospital where he was treated and released. He had to

wait at the hospital until approximately 2:00 pm when his family arrived from New Jersey to pick him up. It was not until that time, for the first time, that Plaintiff Quwanjay Ellis found out that his brother was still alive and was being treated at a different hospital.

23. Plaintiff Quwanjay Ellis continues to deal with the psychological impact of the crash. He has difficulty sleeping due to visions of the accident and has continuous images of the devastation he witnessed.

DAMAGES

24. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth fully herein.

25. As a direct and proximate result of the Defendant's negligent and/or grossly negligent misconduct or omissions, Plaintiffs:

- a. Suffered serious personal injuries, which have caused permanent impairment;
- b. Endured physical pain and suffering;
- c. Suffered mental and emotional distress;
- d. Suffered scarring and permanent disfigurement;
- e. Have incurred unnecessary medical expenses – past, present and future;
- f. Have experienced loss of enjoyment of life – past, present, and future;
- g. Have lost income from their jobs or positions; and
- h. Have been injured and damaged on such other and further particulars as the evidence may show.

26. Additionally, as a direct and proximate result of the Defendant's negligent misconduct or omissions, Plaintiffs' abilities to enjoy life in the future and obtain and continue gainful employment have been forever impaired.

COUNT ONE

(Negligence, Gross Negligence, and Willful and Wanton Conduct)

27. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth fully herein.

28. At all relevant times, Defendant Z&D is and was the exclusive and sole owner of record for the Incident Tour Bus at issue in this Complaint.

29. At all relevant times, the Plaintiffs were lawful passengers on the Incident Tour Bus, owned, controlled, maintained, sponsored, promoted, and operated on January 5, 2020, exclusively by Defendant Z&D.

30. At all relevant times, Defendant Z&D had employed Driver Shuang Qing Feng to drive and competently operate the Incident Tour Bus, and at all relevant times, Driver Shuang Qing Feng, therefore, was acting in the course and scope of his employment with Defendant Z&D in driving the Incident Tour Bus from New York, New York to Columbus, Ohio westbound on Interstate I-70-76 on January 5, 2020 when the crash occurred.

31. At all relevant times described herein, Defendant Z&D and Driver Shuang Qing Feng, through his role as an employee for Defendant Z&D, assumed and did owe a duty of care to all reasonably foreseeable people, including Plaintiffs, to own, lease, manage, maintain, control, entrust, and operate the Incident Tour Bus in a safe and reasonable manner on January 5, 2020.

32. Nevertheless, at all relevant times, both Defendants Z&D and Driver Shuang Qing Feng carelessly, negligently, grossly negligently, and recklessly owned, leased, managed, maintained, entrusted, controlled and operated the Incident Tour Bus at the time and place aforementioned in the following particulars:

- a. In operating the Incident Tour Bus, a dangerous instrumentality, or allowing the Incident Tour Bus to be operated while it was in a dangerous and/or unsafe

condition;

- b. In failing to properly equip the Incident Tour Bus with adequate, operable and safe tires and other vehicle parts;
- c. In failing to sustain the upkeep and maintenance of the Incident Tour Bus, including its parts and tires, in a safe and proper manner;
- d. In operating the Incident Tour Bus, or allowing the Incident Tour Bus to be operated by a driver who was incapable of safely doing so under the circumstances at the time of the accident;
- e. In operating the Incident Tour Bus, or allowing the Incident Tour Bus to be operated at a rate of speed which was excessive for the circumstances then and there prevailing;
- f. In operating the Incident Tour Bus, or allowing the Incident Tour Bus to be operated by a driver who was incapable of keeping a proper lookout;
- g. In operating the Incident Tour Bus, or allowing the Incident Tour Bus to be operated by a driver who was incapable of maintaining proper control over the Incident Tour Bus;
- h. In failing to properly equip the Incident Tour Bus with adequate and safe brakes; and if so properly equipped, in allowing the Incident Tour Bus to be operated by a driver who was incapable of properly utilizing the same;
- i. In failing to properly equip the Incident Tour Bus with adequate and safe steering mechanisms; and, if so properly equipped, in allowing the Incident Tour Bus to be operated by a driver who was incapable of properly utilizing the same;
- j. In operating the Incident Tour Bus, or allowing the Incident Tour Bus to be operated

by a driver who was incapable of properly observing the road and traffic conditions then and there existing;

- k. In failing to install adequate passenger seatbelts in the Incident Tour Bus;
- l. In failing to provide sufficient warnings as to the defectiveness and unsafe conditions with regard to the lack of various restraint systems and other restraint components in the Incident Tour Bus at the time of the accident; and
- m. In such other and further particulars as the evidence may show.

33. At all relevant times, said acts were also in violation of the common and statutory laws of the State of Pennsylvania, as well as the rules and regulations of the Pennsylvania Highway Department.

34. At all relevant times, but for these tortious, negligent, reckless and/or intentional acts and/or omissions by Defendants, Plaintiffs injuries would not have occurred and/or could have been avoided.

35. As a direct and proximate result of Defendant's breaches complained herein, Plaintiffs have endured unnecessary pain and suffering, emotional distress, mental anguish, permanent impairment, and have and will continue to incur medical, hospital, and other expenses.

36. By reason of the foregoing, Plaintiffs are entitled to recover damages for all general and special damages proximately caused by Defendant's grossly negligent, willful and/or wanton acts and/or omissions.

37. WHEREFORE, Plaintiffs demand judgment against Defendants, jointly and severally, for all actual and compensatory damages that they suffered, as well as for punitive damages in an amount sufficient to keep such wrongful conduct from being repeated, together with interest, if

applicable, and all costs of this action and for such other and further relief as this Honorable Court and/or jury may deem just and proper.

COUNT TWO
(Negligent Hiring / Retention / Supervision / Training)

38. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth fully herein.

39. At all relevant times described herein, Driver Shuang Qing Feng was acting within the course and scope of his duties for his employer, Defendant Z&D.

40. At all relevant times, Defendant Z&D owed a duty of care to the public, including Plaintiffs, to hire, retain, supervise and train its agents, employees, servants, and/or independent contractors in a reasonable manner.

41. At all relevant times, Defendant Z&D was negligent and grossly negligent in the hiring and retention of its employee, Driver Shuang Qing Feng, in that Defendant Z&D knew or should have known that Driver Shuang Qing Feng was unfit for the specific tasks to be performed during the course of his employment, namely the general safe operation of a motor vehicle, such as the Incident Tour Bus, during his work for Defendant Z&D.

42. At all relevant times, Defendant Z&D was further negligent by failing to provide any or sufficient job training or supervision to Driver Shuang Qing Feng as an employee for job performance/duties which included driving motor vehicles, including the Incident Tour Bus.

43. At all relevant times, due to Defendant Z&D's aforementioned negligent hiring, retention, training, and supervision of Driver Shuang Qing Feng, Driver Shuang Qing Feng directly and proximately caused or contributed to causing the aforementioned accident at issue in this Complaint.

44. As a direct and proximate result of the above negligent, careless, reckless, grossly negligent, willful and wanton acts of Defendant Z&D, the Plaintiffs have endured unnecessary

pain and suffering, emotional distress, mental anguish, permanent impairment, and have and will continue to incur medical, hospital, and other expenses.

45. By reason of the foregoing, Plaintiffs are entitled to recover damages for all general and special damages proximately caused by Defendants' grossly negligent, willful and/or wanton acts and/or omissions.

46. WHEREFORE, Plaintiffs demand judgment against Defendants, jointly and severally, for all actual and compensatory damages that they suffered, as well as for punitive damages in an amount sufficient to keep such wrongful conduct from being repeated, together with interest, if applicable, and all costs of this action and for such other and further relief as this Honorable Court and/or jury may deem just and proper.

COUNT THREE
(Punitive Damages)

47. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth fully herein.

48. At all relevant times, the actions and inactions of Defendant Z&D and Driver Shuang Qing Feng were of such a character so as to constitute a pattern or practice of willful, wanton and reckless misconduct causing substantial harm and resulting in damages to Plaintiffs.

49. More specifically, at all relevant times, both Defendant Z&D and Driver Shuang Qing Feng acted with a conscious and flagrant disregard for the rights and safety of Plaintiffs and/or deliberately engaged in willful, wanton and reckless disregard for the life and safety of the Plaintiffs.

50. The wrongful acts constitute a willful, wanton, malicious, and reckless disregard of Plaintiffs' rights and a conscious failure to exercise due care. As such, punitive damages should be imposed in an amount sufficient to keep such wrongful conduct from being repeated.

51. By reason of the foregoing, both Defendants are also jointly and severally liable for punitive and exemplary damages.

PRAYER FOR RELIEF

52. WHEREFORE, Plaintiffs demand judgment against Defendants, jointly, severally, and solidarily, as follows:

- a. Economic and compensatory damages in amounts to be determined at trial;
- b. Punitive damages to the fullest extent available under the law;
- c. Pre-judgment and post-judgment interest at the maximum rate allowable by law;
- d. Reasonable claims-preparation expenses;
- e. Attorneys' fees and costs of litigation; and
- f. Such other and further relief available under all applicable state and federal laws and any relief the Court deems just and appropriate.

REQUEST FOR TRIAL BY JURY

Plaintiffs demand trial by jury.

Date: March 5, 2020.

Respectfully submitted,

MOTLEY RICE LLC

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