

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.
Date purchased:

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IVAN H. MILLER, as Administrator of the Goods,
Chattels and Credits of HOPE CARISSA MILLER, a/k/a
HOPE C. MILLER,

Plaintiff designates
Kings
County as the place of trial

Plaintiff,

The basis of the venue is
Defendant's Address

-against-

SUMMONS

ROGER H. SMILEY, MTLR CORP., PJ MECHANICAL
SERVICE & MAINTENANCE CORP., and DELTA SHEET
METAL CORP.

Plaintiff resides at
1401 South Nicolet Road
Appleton, WI 54914

Defendants.

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To the above named Defendants

Out of State Plaintiff

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
February 27, 2008

CHERIFF & FINK, P.C.

By: Bruce J. Cheriff
Attorney for Plaintiff
2 Rector Street, Suite 2104
New York, New York 10019
(212) 285-4100

Defendants' addresses:

MTLR Corp.
362 Kingsland Avenue
Brooklyn, NY 11222

Roger H. Smiley
895 Knickerbocker Avenue
Brooklyn, NY 11207

Delta Sheet Metal Corp. & PJ Mechanical
Service & Maintenance Corp.
135 West 18th Street
New York, NY 10011

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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IVAN H. MILLER, as Administrator of the Goods,
Chattels and Credits of HOPE CARISSA MILLER, a/k/a
HOPE C. MILLER,

Index No:

Plaintiff,

-against-

VERIFIED COMPLAINT

ROGER H. SMILEY, MTLR CORP., PJ MECHANICAL
SERVICE & MAINTENANCE CORP., and DELTA SHEET
METAL CORP.

Defendants
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Plaintiff, by and through his attorneys, CHERIFF & FINK, P.C., as and for his Verified Complaint
alleges as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all relevant times, Defendant ROGER H. SMILEY was and still is a resident of the County of Kings, City and State of New York.
2. At all relevant times, Defendant MTLR CORP. had and still has a place of business in the County of Kings, City and State of New York.
3. At all relevant times, Defendant MTLR CORP. was and still is a foreign business corporation authorized to do business in the State of New York.
4. At all relevant times, Defendant PJ MECHANICAL SERVICE & MAINTENANCE CORP. (PJ CORP.) was and still is domestic business corporation.
5. At all relevant times, Defendant DELTA SHEET METAL CORP (DELTA CORP.) was and still is domestic business corporation.
6. At all relevant times, Defendant MTLR CORP. was the owner of a certain 2003 truck bearing New York State License Plate 93524JT (the "Defendant Truck").

7. At all relevant times, on September 25, 2007, Defendant ROGER H. SMILEY was the operator of the Defendant Truck.
8. At all relevant times, the Defendant Truck was operated by Defendant ROGER H. SMILEY and used with the knowledge, permission and consent, either expressed or implied, of the Defendant MTLR CORP.
9. At all relevant times, the Defendant Truck was operated by Defendant ROGER H. SMILEY and used with the knowledge, permission and consent, either expressed or implied, of the Defendant PJ CORP.
10. At all relevant times, the Defendant Truck was operated by Defendant ROGER H. SMILEY and used with the knowledge, permission and consent, either expressed or implied, of the Defendant DELTA CORP.
11. At all relevant times, the Defendant Truck was operated by Defendant ROGER H. SMILEY on and/or for the business of the Defendant PJ CORP.
12. At all relevant times, the Defendant Truck was operated by Defendant ROGER H. SMILEY on and/or for the business of the Defendant DELTA CORP.
13. At all relevant times, the Defendant Truck was operated by Defendant ROGER H. SMILEY on and/or for the business of the MTLR CORP.
14. At all relevant times, on September 25, 2007, the Decedent HOPE CARRISA MILLER a/k/a HOPE C. MILLER (“HOPE MILLER”) was a pedestrian.
15. At all relevant times, the intersection of 6th Avenue and West Houston Street in the County of City, and State of New York, were and still are public highways and roads in the City and State of New York (the “Accident Location”).
16. On September 25, 2007, the Defendant Truck, while being operated by Defendant ROGER H. SMILEY, came in contact with another vehicle at or near the intersection of Prince Street & 6th Avenue, in the County, City, and State of New York (the “First Accident”).

17. On September 25, 2007, Defendant ROGER H. SMILEY, drove the Defendant Truck from the scene of the First Accident before the police arrived.
18. On September 25, 2007, at approximately 7:00 a.m. and after the First Accident, Defendant ROGER H. SMILEY, drove the Defendant Truck southbound on 6th Avenue and attempted to make a right turn onto West Houston Street at the Accident Location.
19. On September 25, 2007, at approximately 7:00 a.m. and after the First Accident, Defendant ROGER H. SMILEY, drove the Defendant Truck southbound on 6th Avenue and attempted to make a right turn onto West Houston Street at the Accident Location while the decedent HOPE MILLER was a pedestrian.
20. On September 25, 2007, at approximately 7:00 a.m. and after the First Accident, Defendant ROGER H. SMILEY, drove the Defendant Truck southbound on 6th Avenue and attempted to make a right turn onto West Houston Street at the Accident Location while the decedent HOPE MILLER was a pedestrian who was in the crosswalk at the Accident Location.
21. On September 25, 2007, at approximately 7:00 a.m. and after the First Accident, Defendant ROGER H. SMILEY, drove the Defendant Truck southbound on 6th Avenue and attempted to make a right turn onto West Houston Street at the Accident Location while the decedent HOPE MILLER was a pedestrian who was crossing the Street south to north at the Accident Location.
22. On September 25, 2007, at approximately 7:00 a.m. and after the First Accident, Defendant ROGER H. SMILEY, drove the Defendant Truck southbound on 6th Avenue and attempted to make a right turn onto West Houston Street at the Accident Location while the decedent HOPE MILLER was a pedestrian who was crossing the Street south to north in the crosswalk at the Accident Location.
23. On September 25, 2007, at approximately 7:00 a.m. and after the First Accident, Defendant ROGER H. SMILEY, drove the Defendant Truck southbound on 6th Avenue, attempted to make a right turn onto West Houston Street at the Accident Location and made contact with decedent HOPE MILLER.

24. On September 25, 2007, at approximately 7:00 a.m. and after the First Accident, Defendant ROGER H. SMILEY, drove the Defendant Truck southbound on 6th Avenue, attempted to make a right turn onto West Houston Street at the Accident Location and made contact with decedent HOPE MILLER while HOPE C. MILLER was in the crosswalk at the Accident Location (the “Contact”).

25. That Contact occurred solely by reason of the joint, several, concurrent and individual negligence, recklessness and carelessness of the Defendants in their ownership, operation, management, on the business of and in the control of the Defendant Truck, in that Defendant ROGER H. SMILEY negligently caused the Defendant Truck to strike decedent HOPE MILLER; in traveling at an excessive rate of speed and unlawful rate of speed under the circumstances and conditions prevailing at or prior to the Accident; in failing to keep the Defendant Truck under proper, prudent and adequate control; in failing to keep a proper look out; in failing to properly and adequately apply the brakes of the Defendant Truck; in failing to give any sign, signal or warning of the approach of the Defendant Truck; in that the Defendant ROGER H. SMILEY failed to keep the Defendant Truck a safe and proper distance from decedent HOPE MILLER; in carelessly and negligently operating the Defendant Truck; in striking Decedent HOPE MILLER with great force and violence; in failing to yield the right of way to decedent HOPE MILLER; in failing to avoid the Contact, and in otherwise being negligent.

26. On September 25, 2007, the Contact caused the Decedent HOPE MILLER to sustain multiple blunt impact injuries, including, but not limited to, parietal subscalpular hemorrhage, lacerations to the face with embedded gravel about the face, abrasions about the neck, hemorrhages of the sternocleidomastoid and sternohyoid muscles, disruption of the right carotid sheath with hematoma of the omohyoid muscle, laceration of the right carotid, displaced left cricoid cartilage with focal hemorrhage, multiple rib fractures – right ribs 1 through 4 and left ribs 2 through 6 with some of those rib fractures displaced, her right lung is avulsed with her left lung marginally attached to a lobar bronchus with blood in both cavities, subcutaneous and intramuscular hemorrhage of in her chest, with the conducting airways containing blood, abrasions of her right elbow and right hand, abrasions on her left forearm, left elbow, and left wrist with ecchymosis, left

knee abrasions with subcutaneous hemorrhage, diffuse ecchymoses of the left foot, subcutaneous hemorrhage of right thigh along with subcutaneous hemorrhage and deep muscle hemorrhage, abrasions and subcutaneous hemorrhage right knee and right lower leg, serious personal injuries and death (the "Accident").

27. On September 25, 2007 the decedent HOPE MILLER died in the State of New York and thereafter on or about the 14th day of February, 2008, IVAN H. MILLER was duly appointed Administrator of the Goods, Chattels and Credits of the said HOPE MILLER, the Letters of Administration were duly issued to Plaintiff IVAN H. MILLER by the Surrogate of Queens County, and he has duly qualified and thereafter acted and is still acting as such Administrator.

28. By reason of all the foregoing, the Plaintiff HOPE MILLER was caused to and did sustain serious personal injuries and death.

29. That Accident, personal injuries and death sustained by the decedent HOPE MILLER resulting there from were caused solely by the negligence of the Defendants and without any negligence on the part of the Plaintiff or Decedent contributing thereto.

30. As a result of the Accident, the decedent HOPE MILLER suffered injuries as defined by Article 51 of the New York Insurance Law and her estate is entitled to recover for non-economic loss and for such economic losses as are not included within the definition of "basic economic loss," as set forth in Article 51 of the New York Insurance Law.

31. As a result of the Accident, the Decedent HOPE MILLER suffered serious injuries to various parts of her body; suffered great pain and anguish in body and mind from the time of the occurrence to the time of her death which was caused by the Accident, necessarily received hospital care in connection with the injures sustained by her; necessarily received medical treatment and medicines, for which medical expenses were incurred; and her injuries were permanent, protracted, disabling in nature and fatal.

32. Decedent HOPE MILLER was a covered person as defined by Section 5102 of the Insurance Law of the State of New York.

33. This action falls within one or more of the exceptions of Article 16.

34. By reason of the foregoing, Plaintiff suffered damages in an amount in excess of the jurisdictional limits of all lower courts and in an amount to be determined at trial together with costs and disbursements of this action and with such other and further relief as the Court may deem just and proper.

AS AND FOR A SECOND CAUSE OF ACTION

35. As a result of the foregoing, Plaintiff's intestate was so grievously and seriously injured, that decedent HOPE MILLER died as a result of her injuries.

36. That at the time of her death, Plaintiff's intestate left her surviving family, kin and heirs at law for whose benefit this action is commenced.

37. That prior to her death, Decedent HOPE MILLER instate was a healthy women, who attended and was able to perform her usual duties, and who contributed to the support of her family, and by virtue of her wrongful death her family was deprived of her comfort and society and of her support, they have been otherwise peculiarly damaged as a result of the aforesaid wrongful death of the decedent HOPE MILLER.

38. By reason of the death of Plaintiff's intestate, it became necessary to bury her remains, and Plaintiff incurred the obligation therefore, and he will incur additional administration expenses and other expenses in the settlement of the estate of decedent HOPE MILLER.

39. By reason of the foregoing, the next of kin of the Decedent have been damaged in an amount in excess of the jurisdictional limits of all lower courts and in an amount to be determined at trial together with costs and disbursements of this action and with such other and further relief as the Court may deem just and proper.

WHEREFORE, Plaintiff demands judgment, jointly and severally, against Defendants on the First Cause of Action in an amount in excess of the jurisdictional limits of all lower courts and in an amount to be determined at trial and on the Second Cause of Action in an amount in excess of the

jurisdictional limits of all lower courts and in an amount to be determined at trial, together with the costs and disbursements of this action.

Dated: New York, New York
February 27, 2008

CHERIFF & FINK, P.C.

By: Bruce J. Cheriff
Attorneys for Plaintiff
2 Rector Street, Suite 2104
New York, New York 10019
(212) 285-4100

**ATTORNEY'S
VERIFICATION**

Bruce J. Cheriff, an attorney admitted to practice in law in the Courts of the State of New York affirms under penalties of perjury as follows:

I am associated with CHERIFF & Fink, P.C. attorneys for Plaintiff in the within action and I am fully familiar with the facts and circumstances herein.

I have read the foregoing Verified Complaint and know the contents to be true to my own knowledge except as to matters therein alleged on information and belief, and as to those matters I believe them to be true.

The sources of my information are my conversations with Plaintiff and the records and information contained in the files in our office.

The reason this verification is made by me and not by Plaintiff is that Plaintiff does not reside within the County of New York which is the County where I maintain my office.

Dated: New York, New York
 February 27, 2008

Bruce J. Cheriff