

**FTS ATTACHMENT – DATED JULY 27, 2007**  
**QUESTION NO. 12a – PART 3 OF 4**

268. As a direct and proximate result of Defendant, FTS's, designing, manufacturing, selling and/or distributing the Defective Tire and Defendant, FTS's corresponding violation of Section 402(a) of the Restatement of the Law of Torts (Second) on or about August 12, 2006, suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass and became to such an extent that it was wrapped around the axle and became lodged therein and the Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting with the driver's side on the pavement and the passenger side of the Defective Van facing upwards with such force as to cause Melo serious and permanent disfigurement and other conditions, including, but not limited to, an open mid-shaft right femur fracture, an open right foot fracture, abrasions and lacerations to both arms, a closed head injury and death.

269. As a direct and proximate result of the injuries and death, Melo suffered great pain, anguish, sickness and agony.

270. As a direct and proximate result of the injuries and death, Melo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

271. As a direct and proximate result of the injuries, Melo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

272. As a direct and proximate result of these injuries, Melo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits

required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Rafael B. Melo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, FTS, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XXVI - NEGLIGENCE**  
**MELO ADMINISTRATOR VS. FTS**

273. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

274. Defendant, FTS, negligently, carelessly and recklessly designed, manufactured, assembled, sold, and distributed the Defective Van in such a condition that on or about August 12, 2006, while the Defective Van was being operated in a southerly direction in the right lane of Pennsylvania Route 476, approaching the 80 mile marker, suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass to such an extent that it was wrapped around the axle and became lodged therein and the Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting position with the driver's side on the pavement and the passenger side of the Defective Van facing upwards.

275. The negligence, carelessness and recklessness of Defendant, FTS, includes, but is not limited to the following:

**FTS 0986**

(a) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire with an inadequate inner liner (too thin) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(b) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that it failed to provide protection to Melo against personal injury and death as a result of a motor vehicle collision;

(c) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the rubber composition of the inner liner was inadequate (not enough butyl) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(d) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the wedging for stress reduction at belt edge was inadequate (too small), thereby causing tread-belt separation;

(e) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the belt alignment is inadequate (misaligned), thereby causing tread-belt separation;

(f) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the aging resistance is insufficient by reason of inadequate (not enough antidegradents; antioxidants and antiozonands), thereby causing tread-belt separation;

(g) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire lacked nylon cap plys, thereby causing tread-belt separation;

(h) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the tread-belt adhesion was inadequate, thereby causing tread-belt separation;

(i) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the rubber materials and components of the Defective Tire were contaminated during production by oil water, dirt, perspiration, solvent, humidity and other debris, thereby causing tread-belt separation;

(j) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was stored inadequately (too long during the green phase), thereby causing tread-belt separation;

(k) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was handled inadequately (dropped during the green phase), thereby causing tread-belt separation;

(l) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was manufactured without adequate quality control, thereby causing tread-belt separation;

(m) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was manufactured without adequate testing, thereby causing tread-belt separation;

(n) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire curing was inadequate (not hot enough and/or not long enough), thereby causing tread-belt separation;

**FTS 0988**

(o) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire lacked adequate warnings;

(p) Failing to design, manufacture, assemble, sell and/or distribute the Defective Tire with implementation of alternative, safer, practical designs, manufacturing techniques and quality control systems;

(q) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in a defective and unreasonably dangerous condition when it could have been designed and manufactured more safely;

(r) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire without adequate and proper testing;

(s) Choosing to design, manufacture, assemble, sell and/or distribute the Defective Tire without proper quality control;

(t) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire without adequate warning;

(u) Violating Federal Standards and Regulations and Statutes pertaining to the obligation of a tire manufacturer or distributor to recall or make modifications to its product after the manufacturer, distributor knows or should know of the defective nature of its tire;

(v) Violating Federal Regulations pertaining to tires and motor vehicles;

(w) Choosing not to warn of the defective conditions of the Defective Tire;

276. As a direct and proximate result of the negligence, negligence per se, carelessness and recklessness of Defendant, FTS, Melo was caused to sustain serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and other conditions, including,

but not limited to, an open mid-shaft right femur fracture, an open right foot fracture, abrasions and lacerations to both arms, a closed head injury and death.

277. As a direct and proximate result of the injuries and death, Melo suffered great pain, anguish, sickness and agony.

278. As a direct and proximate result, the injuries and death, Melo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

279. As a direct and proximate result of the injuries, Melo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

280. As a direct and proximate result of these injuries, Melo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Rafael B. Melo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, FTS, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XXVII - BREACH OF WARRANTY**  
**MELO ADMINISTRATOR VS. FTS**

281. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

282. Defendant, FTS, breached its warranties, both express and implied, that the Defective Van was safe and proper for its intended and foreseeable use and was designed and manufactured such that it would be safe for its intended use.

283. Defendant, FTS, breached its warranties, both express and implied, by designing, manufacturing, assembling and selling the Defective Van such that it was unsafe, defective and of non-merchantable quality and not reasonably safe for the uses for which it was intended or for which was reasonably foreseeable.

284. As a direct and proximate result of Defendant, FTS's, breach of its express and implied warranties, Melo was caused to sustain serious and permanent injuries, serious impairment bodily function, permanent and serious disfigurement, and other conditions, including but not limited to, an open mid-shaft right femur fracture, an open right foot fracture, abrasions and lacerations to both arms, a closed head injury and death.

285. As a direct and proximate result of the injuries and death, Melo suffered great pain, anguish, sickness and agony.

286. As a direct and proximate result, the injuries and death, Melo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

287. As a direct and proximate result of the injuries, Melo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

288. As a direct and proximate result of these injuries, Melo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Rafael B. Melo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, FTS, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XXVIII - WRONGFUL DEATH**  
**MELO ADMINISTRATOR V. FTS**

289. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

290. As a direct and proximate result of Defendant, FTS's, negligence, negligence per se, carelessness and recklessness and liability pursuant to 402(A) of the Restatement of Torts Second, on or about August 12, 2006, immediately following the failure of the Defective Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over,

struck an embankment and failed to contain Melo, thereby causing Melo to sustain serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and other conditions, including, but not limited to, an open mid-shaft right femur fracture, an open right foot fracture, abrasions and lacerations to both arms, a closed head injury and death.

291. Plaintiff brings this action on behalf of the Melo Beneficiaries pursuant to the Pennsylvania Wrongful Death Act, 42 Pa. C.S.A. §8301 et. seq. (hereinafter "Wrongful Death Act") and claims all damages recoverable under the Pennsylvania Wrongful Death Act.

292. As a direct and proximate result of the injuries and death of Melo, the Melo Beneficiaries have been caused to incur and pay large and various expenses medical treatment rendered to Melo until the time of his death and to incur various funeral, cremation and estate administration expenses for which Plaintiff is entitled to compensation in this proceeding along with all other damages recoverable under the Pennsylvania Wrongful Death Act.

293. As a direct and proximate result of the injuries and death of Melo, the Melo Beneficiaries suffered, are suffering and will for an indefinite period of time in the future suffer damages, injuries losses, including but not limited to, a loss of financial support, and the Melo Beneficiaries have been wrongfully deprived of the contributions they would have received from Melo, including monies which Melo would have provided for items such as clothing, shelter, food, medical care, education, entertainment, recreation and gifts.

294. As a direct and proximate result of the injuries and death of Melo, the Melo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of the services, society and comfort which Melo would have provided including work around the home, physical comforts and services, society and comfort.

295. As a direct and proximate result of the injuries and death of Melo, the Melo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of the guidance, tutelage and moral upbringing which they would have received but for Melo's wrongful death.

296. No recovery for any damages was made during Decedent's lifetime.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Rafael B. Melo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, FTS, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XXIX - SURVIVAL ACT**  
**MELO ADMINISTRATOR VS. FTS**

297. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

298. As a direct and proximate result of Defendant, FTS's, negligence, negligence per se, carelessness, recklessness and liability pursuant to 402(A) of the Restatement of Torts Second, on or about August 12, 2006, immediately following the failure of the Defective Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over, struck an embankment and failed to contain Melo, thereby causing Melo to sustain serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and other conditions, including, but not limited to, an open mid-shaft right femur fracture, an open right foot fracture, abrasions and lacerations to both arms, a closed head injury and death.

299. Plaintiff brings this action as Administrator of the Estate and on behalf of the Melo Estate pursuant to the Pennsylvania Survival Act, 42 Pa. C.S.A. §8302 et. seq. (hereinafter "Survival Act") and claims all damages recoverable under the Survival Act.

300. As a direct and proximate result of the injuries and death of Melo, the Melo Estate suffered damages and losses for the total amount Melo would have earned between August 12, 2006 and his death.

301. As a direct and proximate result of the injuries and death of Melo, the Melo Estate has suffered losses for the total net amount Melo would have earned between August 12, 2006 and the end of Melo's work life expectancy subject to the cost of maintenance and support.

302. As a direct and proximate result of the injuries and death of Melo, the Melo Estate, is entitled to be fairly and adequately compensated for the mental and physical pain, suffering and inconvenience that Melo endured from the moment of the August 12, 2006 injury to the moment of the August 24, 2006 death.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Rafael B. Melo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, FTS, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XXX - STRICT PRODUCTS LIABILITY**  
**MELO ADMINISTRATOR VS. KUSKIN**

303. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

304. Defendant, Kuskin, is strictly liable under Section 402(a) of the Restatement of the Law of Torts (Second) and is liable for the injuries and death of Melo because:

(a) At all relevant times Defendant, Kuskin, was in the business of designing, manufacturing, assembling, selling and/or distributing Compass Tellurid tires and specifically, the Defective Tire;

(b) Defendant, Kuskin, expected the Defective Tire to reach the consumer without substantial change in the condition it was sold;

(c) The Defective Tire actually reached the consumer without substantial change in the condition in which it was sold;

(d) At or around the 23<sup>rd</sup> production week of 2004 and prior thereto, alternative safer, practical designs, manufacturing techniques and quality control systems for production of the Defective Tire existed.

305. Defendant, Kuskin, breached its duties and obligations under Section 402(a) of the Restatement of the Law of Torts (Second) by:

(a) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire with an inadequate inner liner (too thin) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

FTS 0996

(b) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that it failed to provide protection to Melo against personal injury and death as a result of a motor vehicle collision;

(c) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the rubber composition of the inner liner was inadequate (not enough butyl) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(d) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the wedging for stress reduction at belt edge was inadequate (too small), thereby causing tread-belt separation;

(e) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the belt alignment is inadequate (misaligned), thereby causing tread-belt separation;

(f) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the aging resistance is insufficient by reason of inadequate (not enough antidegradents; antioxidants and antiozonands), thereby causing tread-belt separation;

(g) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire lacked nylon cap plies, thereby causing tread-belt separation;

(h) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the tread-belt adhesion was inadequate, thereby causing tread-belt separation;

(i) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the rubber materials and components of the Defective Tire were contaminated during production by oil water, dirt, perspiration, solvent, humidity and other debris, thereby causing tread-belt separation;

(j) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was stored inadequately (too long during the green phase), thereby causing tread-belt separation;

(k) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was handled inadequately (dropped during the green phase), thereby causing tread-belt separation;

(l) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was manufactured without adequate quality control, thereby causing tread-belt separation;

(m) designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was manufactured without adequate testing, thereby causing tread-belt separation;

(n) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire curing was inadequate (not hot enough and/or not long enough), thereby causing tread-belt separation;

(o) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without implementation of alternative, safer, practical designs, manufacturing techniques and quality control systems;

**FTS 0998**

(p) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in a defective and unreasonably dangerous condition when it could have been designed and manufactured more safely;

(q) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without adequate and proper testing;

(r) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without proper quality control;

(s) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without adequate warning;

306. As a direct and proximate result of Defendant, Kuskin's, designing, manufacturing, selling and/or distributing the Defective Tire and Defendant, Kuskin's corresponding violation of Section 402(a) of the Restatement of the Law of Torts (Second) on or about August 12, 2006, suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass and became to such an extent that it was wrapped around the axle and became lodged therein and the Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting with the driver's side on the pavement and the passenger side of the Defective Van facing upwards with such force as to cause Melo serious and permanent disfigurement and other conditions, including, but not limited to, an open mid-shaft right femur fracture, an open right foot fracture, abrasions and lacerations to both arms, a closed head injury and death.

307. As a direct and proximate result of the injuries and death, Melo suffered great pain, anguish, sickness and agony.

308. As a direct and proximate result of the injuries and death, Melo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

309. As a direct and proximate result of the injuries, Melo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

310. As a direct and proximate result of these injuries, Melo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Rafael B. Melo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Kuskin, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XXXI - NEGLIGENCE**  
**MELO ADMINISTRATOR VS. KUSKIN**

311. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

312. Defendant, Kuskin, negligently, carelessly and recklessly designed, manufactured, assembled, sold, and distributed the Defective Van in such a condition that on or about August 12,

2006, while the Defective Van was being operated in a southerly direction in the right lane of Pennsylvania Route 476, approaching the 80 mile marker, suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass to such an extent that it was wrapped around the axle and became lodged therein and the Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting position with the driver's side on the pavement and the passenger side of the Defective Van facing upwards.

313. The negligence, carelessness and recklessness of Defendant, Kuskin, includes, but is not limited to the following:

- (a) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire with an inadequate inner liner (too thin) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;
- (b) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that it failed to provide protection to Melo against personal injury and death as a result of a motor vehicle collision;
- (c) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the rubber composition of the inner liner was inadequate (not enough butyl) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;
- (d) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the wedging for stress reduction at belt edge was inadequate (too small), thereby causing tread-belt separation;

(e) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the belt alignment is inadequate (misaligned), thereby causing tread-belt separation;

(f) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the aging resistance is insufficient by reason of inadequate (not enough antidegradents; antioxidants and antiozonands), thereby causing tread-belt separation;

(g) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire lacked nylon cap plies, thereby causing tread-belt separation;

(h) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the tread-belt adhesion was inadequate, thereby causing tread-belt separation;

(i) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the rubber materials and components of the Defective Tire were contaminated during production by oil water, dirt, perspiration, solvent, humidity and other debris, thereby causing tread-belt separation;

(j) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was stored inadequately (too long during the green phase), thereby causing tread-belt separation;

(k) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was handled inadequately (dropped during the green phase), thereby causing tread-belt separation;

**FTS 1002**

(l) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was manufactured without adequate quality control, thereby causing tread-belt separation;

(m) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was manufactured without adequate testing, thereby causing tread-belt separation;

(n) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire curing was inadequate (not hot enough and/or not long enough), thereby causing tread-belt separation;

(o) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire lacked adequate warnings;

(p) Failing to design, manufacture, assemble, sell and/or distribute the Defective Tire with implementation of alternative, safer, practical designs, manufacturing techniques and quality control systems;

(q) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in a defective and unreasonably dangerous condition when it could have been designed and manufactured more safely;

(r) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire without adequate and proper testing;

(s) Choosing to design, manufacture, assemble, sell and/or distribute the Defective Tire without proper quality control;

(t) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire without adequate warning;

(u) Violating Federal Standards and Regulations and Statutes pertaining to the obligation of a tire manufacturer or distributor to recall or make modifications to its product after the manufacturer, distributor knows or should know of the defective nature of its tire;

(v) Violating Federal Regulations pertaining to tires and motor vehicles;

(w) Choosing not to warn of the defective conditions of the Defective Tire;

314. As a direct and proximate result of the negligence, negligence per se, carelessness and recklessness of Defendant, Kuskin, Melo was caused to sustain serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and other conditions, including, but not limited to, an open mid-shaft right femur fracture, an open right foot fracture, abrasions and lacerations to both arms, a closed head injury and death.

315. As a direct and proximate result of the injuries and death, Melo suffered great pain, anguish, sickness and agony.

316. As a direct and proximate result, the injuries and death, Melo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

317. As a direct and proximate result of the injuries, Melo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

318. As a direct and proximate result of these injuries, Melo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits

required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Rafael B. Melo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Kuskin, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XXXII - BREACH OF WARRANTY**  
**MELO ADMINISTRATOR VS. KUSKIN**

319. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

320. Defendant, Kuskin, breached its warranties, both express and implied, that the Defective Van was safe and proper for its intended and foreseeable use and was designed and manufactured such that it would be safe for its intended use.

321. Defendant, Kuskin, breached its warranties, both express and implied, by designing, manufacturing, assembling and selling the Defective Van such that it was unsafe, defective and of non-merchantable quality and not reasonably safe for the uses for which it was intended or for which was reasonably foreseeable.

322. As a direct and proximate result of Defendant, Kuskin's, breach of its express and implied warranties, Melo was caused to sustain serious and permanent injuries, serious impairment bodily function, permanent and serious disfigurement, and other conditions, including but not

limited to, an open mid-shaft right femur fracture, an open right foot fracture, abrasions and lacerations to both arms, a closed head injury and death.

323. As a direct and proximate result of the injuries and death, Melo suffered great pain, anguish, sickness and agony.

324. As a direct and proximate result, the injuries and death, Melo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

325. As a direct and proximate result of the injuries, Melo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

326. As a direct and proximate result of these injuries, Melo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

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**COUNT XXXIII - WRONGFUL DEATH**  
**MELO ADMINISTRATOR V. KUSKIN**

327. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

328. As a direct and proximate result of Defendant, Kuskin's, negligence, negligence per se, carelessness and recklessness and liability pursuant to 402(A) of the Restatement of Torts Second, on or about August 12, 2006, immediately following the failure of the Defective Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over, struck an embankment and failed to contain Melo, thereby causing Melo to sustain serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and other conditions, including, but not limited to, an open mid-shaft right femur fracture, an open right foot fracture, abrasions and lacerations to both arms, a closed head injury and death.

329. Plaintiff brings this action on behalf of the Melo Beneficiaries pursuant to the Pennsylvania Wrongful Death Act, 42 Pa. C.S.A. §8301 et. seq. (hereinafter "Wrongful Death Act") and claims all damages recoverable under the Pennsylvania Wrongful Death Act.

330. As a direct and proximate result of the injuries and death of Melo, the Melo Beneficiaries have been caused to incur and pay large and various expenses medical treatment rendered to Melo until the time of his death and to incur various funeral, cremation and estate administration expenses for which Plaintiff is entitled to compensation in this proceeding along with all other damages recoverable under the Pennsylvania Wrongful Death Act.

331. As a direct and proximate result of the injuries and death of Melo, the Melo Beneficiaries suffered, are suffering and will for an indefinite period of time in the future suffer damages, injuries losses, including but not limited to, a loss of financial support, and the Melo Beneficiaries have been wrongfully deprived of the contributions they would have received from

Melo, including monies which Melo would have provided for items such as clothing, shelter, food, medical care, education, entertainment, recreation and gifts.

332. As a direct and proximate result of the injuries and death of Melo, the Melo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of the services, society and comfort which Melo would have provided including work around the home, physical comforts and services, society and comfort.

333. As a direct and proximate result of the injuries and death of Melo, the Melo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of the guidance, tutelage and moral upbringing which they would have received but for Melo's wrongful death.

334. No recovery for any damages was made during Decedent's lifetime.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Rafael B. Melo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Kuskin, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XXXIV - SURVIVAL ACT**  
**MELO ADMINISTRATOR VS. KUSKIN**

335. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

336. As a direct and proximate result of Defendant, Kuskin's, negligence, negligence per se, carelessness, recklessness and liability pursuant to 402(A) of the Restatement of Torts

Second, on or about August 12, 2006, immediately following the failure of the Defective Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over, struck an embankment and failed to contain Melo, thereby causing Melo to sustain serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and other conditions, including, but not limited to, an open mid-shaft right femur fracture, an open right foot fracture, abrasions and lacerations to both arms, a closed head injury and death.

337. Plaintiff brings this action as Administrator of the Estate and on behalf of the Melo Estate pursuant to the Pennsylvania Survival Act, 42 Pa. C.S.A. §8302 et. seq. (hereinafter "Survival Act") and claims all damages recoverable under the Survival Act.

338. As a direct and proximate result of the injuries and death of Melo, the Melo Estate suffered damages and losses for the total amount Melo would have earned between August 12, 2006 and his death.

339. As a direct and proximate result of the injuries and death of Melo, the Melo Estate has suffered losses for the total net amount Melo would have earned between August 12, 2006 and the end of Melo's work life expectancy subject to the cost of maintenance and support.

340. As a direct and proximate result of the injuries and death of Melo, the Melo Estate, is entitled to be fairly and adequately compensated for the mental and physical pain, suffering and inconvenience that Melo endured from the moment of the August 12, 2006 injury to the moment of the August 24, 2006 death.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Rafael B. Melo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Kuskin, Individually and Jointly and Severally with Defendants in an amount to exceed

the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XXXV - STRICT PRODUCTS LIABILITY**  
**MELO ADMINISTRATOR VS. MANUFACTURER**

341. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

342. Defendant, Manufacturer, is strictly liable under Section 402(a) of the Restatement of the Law of Torts (Second) and is liable for the injuries and death of Melo because:

(a) At all relevant times Defendant, Manufacturer, was in the business of designing, manufacturing, assembling, selling and/or distributing Compass Tellurid tires and specifically, the Defective Tire;

(b) Defendant, Manufacturer, expected the Defective Tire to reach the consumer without substantial change in the condition it was sold;

(c) The Defective Tire actually reached the consumer without substantial change in the condition in which it was sold;

(d) At or around the 23<sup>rd</sup> production week of 2004 and prior thereto, alternative safer, practical designs, manufacturing techniques and quality control systems for production of the Defective Tire existed.

343. Defendant, Manufacturer, breached its duties and obligations under Section 402(a) of the Restatement of the Law of Torts (Second) by:

**FTS 1010**

(a) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire with an inadequate inner liner (too thin) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(b) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that it failed to provide protection to Melo against personal injury and death as a result of a motor vehicle collision;

(c) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the rubber composition of the inner liner was inadequate (not enough butyl) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(d) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the wedging for stress reduction at belt edge was inadequate (too small), thereby causing tread-belt separation;

(e) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the belt alignment is inadequate (misaligned), thereby causing tread-belt separation;

(f) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the aging resistance is insufficient by reason of inadequate (not enough antidegradents; antioxidants and antiozonands), thereby causing tread-belt separation;

(g) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire lacked nylon cap plies, thereby causing tread-belt separation;

(h) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the tread-belt adhesion was inadequate, thereby causing tread-belt separation;

(i) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the rubber materials and components of the Defective Tire were contaminated during production by oil water, dirt, perspiration, solvent, humidity and other debris, thereby causing tread-belt separation;

(j) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was stored inadequately (too long during the green phase), thereby causing tread-belt separation;

(k) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was handled inadequately (dropped during the green phase), thereby causing tread-belt separation;

(l) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was manufactured without adequate quality control, thereby causing tread-belt separation;

(m) designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was manufactured without adequate testing, thereby causing tread-belt separation;

(n) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire curing was inadequate (not hot enough and/or not long enough), thereby causing tread-belt separation;

(o) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without implementation of alternative, safer, practical designs, manufacturing techniques and quality control systems;

(p) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in a defective and unreasonably dangerous condition when it could have been designed and manufactured more safely;

(q) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without adequate and proper testing;

(r) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without proper quality control;

(s) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without adequate warning;

344. As a direct and proximate result of Defendant, Manufacturer's, designing, manufacturing, selling and/or distributing the Defective Tire and Defendant, Manufacturer's corresponding violation of Section 402(a) of the Restatement of the Law of Torts (Second) on or about August 12, 2006, suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass and became to such an extent that it was wrapped around the axle and became lodged therein and the Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting with the driver's side on the pavement and the passenger side of the Defective Van facing upwards with such force as to cause Melo serious and permanent disfigurement and other conditions, including, but not limited to, an open mid-shaft

right femur fracture, an open right foot fracture, abrasions and lacerations to both arms, a closed head injury and death.

345. As a direct and proximate result of the injuries and death, Melo suffered great pain, anguish, sickness and agony.

346. As a direct and proximate result of the injuries and death, Melo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

347. As a direct and proximate result of the injuries, Melo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

348. As a direct and proximate result of these injuries, Melo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Rafael B. Melo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Manufacturer, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XXXVI - NEGLIGENCE**  
**MELO ADMINISTRATOR VS. MANUFACTURER**

349. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

350. Defendant, Manufacturer, negligently, carelessly and recklessly designed, manufactured, assembled, sold, and distributed the Defective Van in such a condition that on or about August 12, 2006, while the Defective Van was being operated in a southerly direction in the right lane of Pennsylvania Route 476, approaching the 80 mile marker, suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass to such an extent that it was wrapped around the axle and became lodged therein and the Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting position with the driver's side on the pavement and the passenger side of the Defective Van facing upwards.

351. The negligence, carelessness and recklessness of Defendant, Manufacturer, includes, but is not limited to the following:

(a) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire with an inadequate inner liner (too thin) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(b) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that it failed to provide protection to Melo against personal injury and death as a result of a motor vehicle collision;

**FTS 1015**

(c) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the rubber composition of the inner liner was inadequate (not enough butyl) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(d) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the wedging for stress reduction at belt edge was inadequate (too small), thereby causing tread-belt separation;

(e) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the belt alignment is inadequate (misaligned), thereby causing tread-belt separation;

(f) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the aging resistance is insufficient by reason of inadequate (not enough antidegradents; antioxidants and antiozonands), thereby causing tread-belt separation;

(g) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire lacked nylon cap plies, thereby causing tread-belt separation;

(h) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the tread-belt adhesion was inadequate, thereby causing tread-belt separation;

(i) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the rubber materials and components of the Defective Tire were

contaminated during production by oil water, dirt, perspiration, solvent, humidity and other debris, thereby causing tread-belt separation;

(j) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was stored inadequately (too long during the green phase), thereby causing tread-belt separation;

(k) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was handled inadequately (dropped during the green phase), thereby causing tread-belt separation;

(l) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was manufactured without adequate quality control, thereby causing tread-belt separation;

(m) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was manufactured without adequate testing, thereby causing tread-belt separation;

(n) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire curing was inadequate (not hot enough and/or not long enough), thereby causing tread-belt separation;

(o) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire lacked adequate warnings;

(p) Failing to design, manufacture, assemble, sell and/or distribute the Defective Tire with implementation of alternative, safer, practical designs, manufacturing techniques and quality control systems;

(q) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in a defective and unreasonably dangerous condition when it could have been designed and manufactured more safely;

(r) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire without adequate and proper testing;

(s) Choosing to design, manufacture, assemble, sell and/or distribute the Defective Tire without proper quality control;

(t) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire without adequate warning;

(u) Violating Federal Standards and Regulations and Statutes pertaining to the obligation of a tire manufacturer or distributor to recall or make modifications to its product after the manufacturer, distributor knows or should know of the defective nature of its tire;

(v) Violating Federal Regulations pertaining to tires and motor vehicles;

(w) Choosing not to warn of the defective conditions of the Defective Tire;

352. As a direct and proximate result of the negligence, negligence per se, carelessness and recklessness of Defendant, Manufacturer, Melo was caused to sustain serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and other conditions, including, but not limited to, an open mid-shaft right femur fracture, an open right foot fracture, abrasions and lacerations to both arms, a closed head injury and death.

353. As a direct and proximate result of the injuries and death, Melo suffered great pain, anguish, sickness and agony.

354. As a direct and proximate result, the injuries and death, Melo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

355. As a direct and proximate result of the injuries, Melo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

356. As a direct and proximate result of these injuries, Melo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Rafael B. Melo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Manufacturer, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XXXVII - BREACH OF WARRANTY**  
**MELO ADMINISTRATOR VS. MANUFACTURER**

357. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

358. Defendant, Manufacturer, breached its warranties, both express and implied, that the Defective Van was safe and proper for its intended and foreseeable use and was designed and manufactured such that it would be safe for its intended use.

359. Defendant, Manufacturer, breached its warranties, both express and implied, by designing, manufacturing, assembling and selling the Defective Van such that it was unsafe, defective and of non-merchantable quality and not reasonably safe for the uses for which it was intended or for which was reasonably foreseeable.

360. As a direct and proximate result of Defendant, Manufacturer's, breach of its express and implied warranties, Melo was caused to sustain serious and permanent injuries, serious impairment bodily function, permanent and serious disfigurement, and other conditions, including but not limited to, an open mid-shaft right femur fracture, an open right foot fracture, abrasions and lacerations to both arms, a closed head injury and death.

361. As a direct and proximate result of the injuries and death, Melo suffered great pain, anguish, sickness and agony.

362. As a direct and proximate result, the injuries and death, Melo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

363. As a direct and proximate result of the injuries, Melo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

364. As a direct and proximate result of these injuries, Melo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits

required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Rafael B. Melo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Manufacturer, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XXXVIII - WRONGFUL DEATH**  
**MELO ADMINISTRATOR V. MANUFACTURER**

365. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

366. As a direct and proximate result of Defendant, Manufacturer's, negligence, negligence per se, carelessness and recklessness and liability pursuant to 402(A) of the Restatement of Torts Second, on or about August 12, 2006, immediately following the failure of the Defective Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over, struck an embankment and failed to contain Melo, thereby causing Melo to sustain serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and other conditions, including, but not limited to, an open mid-shaft right femur fracture, an open right foot fracture, abrasions and lacerations to both arms, a closed head injury and death.

367. Plaintiff brings this action on behalf of the Melo Beneficiaries pursuant to the Pennsylvania Wrongful Death Act, 42 Pa. C.S.A. §8301 et. seq. (hereinafter "Wrongful Death Act") and claims all damages recoverable under the Pennsylvania Wrongful Death Act.

368. As a direct and proximate result of the injuries and death of Melo, the Melo Beneficiaries have been caused to incur and pay large and various expenses medical treatment rendered to Melo until the time of his death and to incur various funeral, cremation and estate administration expenses for which Plaintiff is entitled to compensation in this proceeding along with all other damages recoverable under the Pennsylvania Wrongful Death Act.

369. As a direct and proximate result of the injuries and death of Melo, the Melo Beneficiaries suffered, are suffering and will for an indefinite period of time in the future suffer damages, injuries losses, including but not limited to, a loss of financial support, and the Melo Beneficiaries have been wrongfully deprived of the contributions they would have received from Melo, including monies which Melo would have provided for items such as clothing, shelter, food, medical care, education, entertainment, recreation and gifts.

370. As a direct and proximate result of the injuries and death of Melo, the Melo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of the services, society and comfort which Melo would have provided including work around the home, physical comforts and services, society and comfort.

371. As a direct and proximate result of the injuries and death of Melo, the Melo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of the guidance, tutelage and moral upbringing which they would have received but for Melo's wrongful death.

372. No recovery for any damages was made during Decedent's lifetime.

WHEREFORE, Plaintiff, Robert E. McCulley, Administrator of the Estate of Rafael B. Melo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Manufacturer, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XXXIX - SURVIVAL ACT**  
**MELO ADMINISTRATOR VS. MANUFACTURER**

373. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

374. As a direct and proximate result of Defendant, Manufacturer's, negligence, negligence per se, carelessness, recklessness and liability pursuant to 402(A) of the Restatement of Torts Second, on or about August 12, 2006, immediately following the failure of the Defective Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over, struck an embankment and failed to contain Melo, thereby causing Melo to sustain serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and other conditions, including, but not limited to, an open mid-shaft right femur fracture, an open right foot fracture, abrasions and lacerations to both arms, a closed head injury and death.

375. Plaintiff brings this action as Administrator of the Estate and on behalf of the Melo Estate pursuant to the Pennsylvania Survival Act, 42 Pa. C.S.A. §8302 et. seq. (hereinafter "Survival Act") and claims all damages recoverable under the Survival Act.

376. As a direct and proximate result of the injuries and death of Melo, the Melo Estate suffered damages and losses for the total amount Melo would have earned between August 12, 2006 and his death.

377. As a direct and proximate result of the injuries and death of Melo, the Melo Estate has suffered losses for the total net amount Melo would have earned between August 12, 2006 and the end of Melo's work life expectancy subject to the cost of maintenance and support.

378. As a direct and proximate result of the injuries and death of Melo, the Melo Estate, is entitled to be fairly and adequately compensated for the mental and physical pain, suffering and inconvenience that Melo endured from the moment of the August 12, 2006 injury to the moment of the August 24, 2006 death.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Rafael B. Melo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Manufacturer, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XL - NEGLIGENCE**  
**MELO ADMINISTRATOR VS. OPERATOR**

379. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

380. On or about August 12, 2006, Defendant, Operator, carelessly and negligently operated and drove the Defective Van with the Defective Tire mounted on the left rear wheel within

the posted speed limit in a southerly direction on Pennsylvania Route 476 approaching the 80 mile marker, when suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass to such an extent that it was wrapped around the axle and became lodged therein and the Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting position with the driver's side on the pavement and the passenger side of the Defective Van facing upwards with such force as to cause Melo serious and permanent injuries and death.

381. The negligence, carelessness and recklessness of Defendant, Operator, includes, but is not limited to the following:

(a) Failing to be highly vigilant and maintain sufficient control of the Defective Van;

(b) Failing to keep the Defective Van under proper and adequate control.

382. As a direct and proximate result of the negligence and carelessness, of Defendant, Operator, Melo was caused to sustain serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and other conditions, thereby resulting in serious and permanent injuries and death.

383. As a direct and proximate result of the injuries and death, Melo suffered great pain, anguish, sickness and agony.

384. As a direct and proximate result, the injuries and death, Melo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

385. As a direct and proximate result of the injuries, Melo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

386. As a direct and proximate result of these injuries, Melo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Rafael B. Melo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Operator, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XLI - WRONGFUL DEATH**  
**MELO ADMINISTRATOR V. OPERATOR**

387. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

388. As a direct and proximate result of Defendant, Operator's, negligence, negligence per se, carelessness and recklessness and liability pursuant to 402(A) of the Restatement of Torts Second, on or about August 12, 2006, immediately following the failure of the Defective Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over, struck an embankment and failed to contain Melo, thereby causing Melo to sustain serious and

permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and other conditions, including, but not limited to, an open mid-shaft right femur fracture, an open right foot fracture, abrasions and lacerations to both arms, a closed head injury and death.

389. Plaintiff brings this action on behalf of the Melo Beneficiaries pursuant to the Pennsylvania Wrongful Death Act, 42 Pa. C.S.A. §8301 et. seq. (hereinafter "Wrongful Death Act") and claims all damages recoverable under the Pennsylvania Wrongful Death Act.

390. As a direct and proximate result of the injuries and death of Melo, the Melo Beneficiaries have been caused to incur and pay large and various expenses medical treatment rendered to Melo until the time of his death and to incur various funeral, cremation and estate administration expenses for which Plaintiff is entitled to compensation in this proceeding along with all other damages recoverable under the Pennsylvania Wrongful Death Act.

391. As a direct and proximate result of the injuries and death of Melo, the Melo Beneficiaries suffered, are suffering and will for an indefinite period of time in the future suffer damages, injuries losses, including but not limited to, a loss of financial support, and the Melo Beneficiaries have been wrongfully deprived of the contributions they would have received from Melo, including monies which Melo would have provided for items such as clothing, shelter, food, medical care, education, entertainment, recreation and gifts.

392. As a direct and proximate result of the injuries and death of Melo, the Melo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of the services, society and comfort which Melo would have provided including work around the home, physical comforts and services, society and comfort.

393. As a direct and proximate result of the injuries and death of Melo, the Melo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of the guidance, tutelage and moral upbringing which they would have received but for Melo's wrongful death.

394. No recovery for any damages was made during Decedent's lifetime.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Rafael B. Melo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Operator, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XLII - SURVIVAL ACT**  
**MELO ADMINISTRATOR VS. OPERATOR**

395. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

396. As a direct and proximate result of Defendant, Operator's, negligence, negligence per se, carelessness, recklessness and liability pursuant to 402(A) of the Restatement of Torts Second, on or about August 12, 2006, immediately following the failure of the Defective Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over, struck an embankment and failed to contain Melo, thereby causing Melo to sustain serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and other conditions, including, but not limited to, an open mid-shaft right femur fracture, an open right foot fracture, abrasions and lacerations to both arms, a closed head injury and death.

397. Plaintiff brings this action as Administrator of the Estate and on behalf of the Melo Estate pursuant to the Pennsylvania Survival Act, 42 Pa. C.S.A. §8302 et. seq. (hereinafter "Survival Act") and claims all damages recoverable under the Survival Act.

398. As a direct and proximate result of the injuries and death of Melo, the Melo Estate suffered damages and losses for the total amount Melo would have earned between August 12, 2006 and his death.

399. As a direct and proximate result of the injuries and death of Melo, the Melo Estate has suffered losses for the total net amount Melo would have earned between August 12, 2006 and the end of Melo's work life expectancy subject to the cost of maintenance and support.

400. As a direct and proximate result of the injuries and death of Melo, the Melo Estate, is entitled to be fairly and adequately compensated for the mental and physical pain, suffering and inconvenience that Melo endured from the moment of the August 12, 2006 injury to the moment of the August 24, 2006 death.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Rafael B. Melo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Operator, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XLIII - STRICT LIABILITY**  
**FIGUEIREDO ADMINISTRATOR V. GM**

401. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

402. The Defendant, GM is strictly liability under Section 402(a) of the Restatement of the Law of Torts Second and is liable for the injuries and death of Figueiredo because:

(a) At all relevant times, Defendant, GM, was in the business of designing, manufacturing, assembling, selling and/or distributing Chevrolet Express Cargo Vans including the Defective Van;

(b) Defendant, GM, expected the Defective Van to reach the consumer without substantial change in the condition it was sold;

(c) The Defective Van actually reached the consumer without substantial change in the condition it was sold;

(d) At or around 2000 and prior thereto, alternative, safer, practical designs of the Defective Van existed;

403. Defendant, GM, breached its duties and obligations under Section 402(a) of the Restatement of the Law of Torts Second by:

(a) Designing, manufacturing, assembling, selling and/or distributing the Defective Van in an unreasonably dangerous defective and unsafe condition;

(b) Designing, manufacturing, assembling, selling and/or distributing the Defective Van in such a condition that the Defective Van lacked one or more elements necessary to make it safe for its intended use;

(c) Designing, manufacturing, assembling, selling and/or distributing the Defective Van in such a condition that it contained one or more elements which made it unsafe for its intended use;

(d) Designing, manufacturing, assembling, selling and/or distributing the Defective Van in such a condition that it was not reasonably crashworthy;

(e) Designing, manufacturing, assembling, selling and/or distributing the Defective Van in such a condition that it swerved and steered out of control, rolled over and failed to keep the occupants contained within the Defective Van;

(f) Designing, manufacturing, assembling, selling and/or distributing the Defective Van such that it could be steered and control can be maintained in the event of a tire failure and such that occupants are contained within the Defective Van;

(g) Designing, manufacturing, assembling, selling and/or distributing the Defective Van in such a condition that it lacked all necessary safety features to protect occupants;

(h) Designing, manufacturing, assembling, selling and/or distributing the Defective Van without the implementation of alternative safer, practical designs;

(i) Designing, manufacturing, assembling, selling and/or distributing the Defective Van in a defective and unreasonably dangerous condition when it could have been designed more safely;

(j) Designing, manufacturing, assembling, selling and/or distributing the Defective Van without incorporating therein the state of the art of the scientific and technological knowledge available to GM at the time the Defective Van was placed on the market;

(k) Designing, manufacturing, assembling, selling, distributing and failing to warn of the defective and dangerous conditions of the Defective Van including a high rollover propensity;

(l) Designing, manufacturing, assembling, selling, distributing and failing to warn of the defective and dangerous conditions of the Defective Van including lack of electronic stability control;

(m) Designing, manufacturing, assembling, selling, distributing and failing to warn of the defective and dangerous conditions of the Defective Van including false latching seatbelts;

(n) Designing, manufacturing, assembling, selling, distributing and failing to warn of the defective and dangerous conditions of the Defective Van including lack of glazing;

(o) Designing, manufacturing, assembling, selling, distributing and failing to warn of the defective and dangerous conditions of the Defective Van including faulty door latching;

(p) Designing, manufacturing, assembling, selling, distributing and failing to warn of the defective and dangerous conditions of the Defective Van including a center of gravity which is too high;

(q) Designing, manufacturing, assembling, selling, distributing and failing to warn of the defective and dangerous conditions of the Defective Van including a track width which was too narrow;

(r) Designing, manufacturing, assembling, selling, distributing the Defective Van in such a condition that it had an extremely low static stability factor;

(s) Designing, manufacturing, assembling, selling and/or distributing the Defective Van in such a condition that it causes over-steering and under-steering in the event of tire failure.

404. As a direct and proximate result of Defendant, GM's designing, manufacturing, assembling selling and/or distributing of the Defective Van and Defendant, GM's corresponding violation of Section 402(a) of the Restatement of Law Torts Second on or about August 12, 2006, immediately following the failure of the Defective Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over, struck an embankment and failed to contain Melo, Figueiredo, Souza, thereby resulting in multiple serious and permanent injuries and death.

405. As a direct and proximate result of the injuries and death, Figueiredo, suffered great pain, anguish, sickness and anxiety.

406. As a direct and proximate result of the injuries and death, Figueiredo, suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of Hedonic pleasures and the inability to attend to social and work obligations.

407. As a direct and proximate result of the injuries and death, Figueiredo, has undergone a great loss of earnings and earning capacity and by reason of the death has sustained a great loss of all future earnings and earning capacity.

408. As a direct and proximate result of the injuries, Figueiredo, has incurred medical, rehabilitative and other related expenses in an amount in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. Section 1701 et. seq., as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, General Motors Corporation, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars

(\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XLIV - NEGLIGENCE**  
**FIGUEIREDO ADMINISTRATOR VS. GM**

409. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

410. Defendant, GM, negligently, carelessly and recklessly designed, manufactured, assembled, sold and/or distributed the Defective Van in such a condition that in the event of a foreseeable tire failure, the Defective Van would steer out of control, sway across the highway, rollover, strike an embankment and fail to contain the occupants.

411. The negligence, carelessness and recklessness of Defendant, GM, includes but is not limited to,

- (a) Choosing not to take reasonable care in the design of the Defective Van;
- (b) Choosing not to use reasonable care in the production of the Defective Van;
- (c) Choosing not to use reasonable care in the manufacture of the Defective Van;
- (d) Choosing not to use reasonable care in the assembly of the Defective Van;
- (e) Choosing not to reasonably and properly test and properly analyze the testing of the Defective Van under reasonably foreseeable circumstances;
- (f) Choosing not to use due care under the circumstances;
- (g) Choosing to violate Federal Standards and Regulations and Statutes pertaining to the obligation of an automobile manufacturer to recall and make modifications to its products after the manufacturer knows or should know of the defective nature of the Defective Van;

- (h) Choosing to violate Federal Regulations pertaining to motor vehicles;
- (i) Negligence at law;
- (j) Choosing not to take necessary steps to modify the Defective Van;
- (k) Choosing not to recall and retrofit the Defective Van;
- (l) Choosing not to design, manufacture, assemble, sell and/or distribute the Defective Van such that the steering and suspension does not cause over-steer and under-steer in cases of tire failure;
- (m) Choosing not to design, manufacture, assemble, sell and/or distribute the Defective Van with a wider track width;
- (n) Choosing not to design, manufacture, assemble, sell and/or distribute the Defective Van with a lower center of gravity;
- (o) Choosing not to design, manufacture, assemble, sell and/or distribute the Defective Van with a higher static stability factor;
- (p) Choosing not to design, manufacture, assemble, sell and/or distribute the Defective Van with stiffer shock absorbers;
- (q) Choosing not to design, manufacture, assemble, sell and/or distribute the Defective Van with stronger stabilize bars;
- (r) Choosing not to design, manufacture, assemble, sell and/or distribute the Defective Van with seatbelts that do not false latch;
- (s) Choosing not to design, manufacture, assemble, sell and/or distribute the Defective Van with door latches that will not fail during reasonable foreseeable crashes and rollovers;

(t) Choosing not to design, manufacture, assemble, sell and/or distribute the Defective Van with glazing to contain occupants in the event of a reasonably foreseeable crash or rollover;

(u) Choosing not to design, manufacture, assemble, sell and/or distribute the Defective Van such that all occupants would be contained in the event of a reasonably foreseeable rollover or crash;

(v) Choosing not to design, manufacture, assemble, sell and/or distribute the Defective Van in such a condition that it will not sway, serve and steer out of control thereby resulting in rollover and crashes in the event of a reasonably foreseeable tire failure;

412. As a direct and proximate result of the negligence, negligence per se, carelessness, and recklessness of Defendant, GM, Figueiredo was caused to sustain serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

413. As a direct and proximate result of the injuries and death, Figueiredo suffered great pain, anguish, sickness and agony.

414. As a direct and proximate result, the injuries and death, Figueiredo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

415. As a direct and proximate result of the injuries, Figueiredo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

416. As a direct and proximate result of these injuries, Figueiredo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits

required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, General Motors Corporation, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XLV - BREACH OF WARRANTY**  
**FIGUEIREDO ADMINISTRATOR VS. GM**

417. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

418. Defendant, GM, breached its warranties, both express and implied, that the Defective Van was safe and proper for its intended and foreseeable use and was designed and manufactured such that it would be safe for its intended use.

419. Defendant, GM, breached its warranties, both express and implied, by designing, manufacturing, assembling and selling the Defective Van such that it was unsafe, defective and of non-merchantable quality and not reasonably safe for the uses for which it was intended or for which was reasonably foreseeable.

420. As a direct and proximate result of Defendant, GM's, breach of its express and implied warranties, Figueiredo was caused to sustain multiple serious and permanent injuries, serious impairment bodily function, permanent and serious disfigurement and death.

421. As a direct and proximate result of the injuries and death, Figueiredo suffered great pain, anguish, sickness and agony.

422. As a direct and proximate result, the injuries and death, Figueiredo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

423. As a direct and proximate result of the injuries, Figueiredo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

424. As a direct and proximate result of these injuries, Figueiredo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, General Motors Corporation, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XLVI - WRONGFUL DEATH**  
**FIGUEIREDO ADMINISTRATOR V. GM**

425. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

426. As a direct and proximate result of Defendant, GM's, negligence, negligence per se, carelessness and recklessness and liability pursuant to 402(A) of the Restatement of Torts Second, the Defective Van was in such a condition that in the event of a foreseeable tire failure, the Defective Van would steer out of control, sway across the highway, rollover, strike an embankment and fail to contain the occupants, thereby causing Figueiredo to sustain serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

427. Plaintiff brings this action on behalf of the Figueiredo Beneficiaries pursuant to the Pennsylvania Wrongful Death Act, 42 Pa. C.S.A. §8301 et. seq. (hereinafter "Wrongful Death Act") and claims all damages recoverable under the Pennsylvania Wrongful Death Act.

428. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries have been caused to incur and pay large and various expenses medical treatment rendered to Figueiredo until the time of his death and to incur various funeral, cremation and estate administration expenses for which Plaintiff is entitled to compensation in this proceeding along with all other damages recoverable under the Pennsylvania Wrongful Death Act.

429. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries suffered, are suffering and will for an indefinite period of time in the future suffer damages, injuries losses, including but not limited to, a loss of financial support, and the Figueiredo Beneficiaries have been wrongfully deprived of the contributions they would have received from Figueiredo, including monies which Figueiredo would have provided for items such as clothing, shelter, food, medical care, education, entertainment, recreation and gifts.

430. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of

the services, society and comfort which Figueiredo would have provided including work around the home, physical comforts and services, society and comfort.

431. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of the guidance, tutelage and moral upbringing which they would have received but for Figueiredo's wrongful death.

432. No recovery for any damages was made during Decedent's lifetime.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudier Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, General Motors Corporation, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XLVII - SURVIVAL ACT**  
**FIGUEIREDO ADMINISTRATOR VS. GM**

433. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

434. As a direct and proximate result of Defendant, GM's, negligence, negligence per se, carelessness, recklessness and liability pursuant to 402(A) of the Restatement of Torts Second, the Defective Van was in such a condition that in the event of a foreseeable tire failure, the Defective Van would steer out of control, sway across the highway, rollover, strike an embankment and fail

to contain the occupants, thereby causing Figueiredo to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

435. Plaintiff brings this action as Administrator of the Estate and on behalf of the Figueiredo Estate pursuant to the Pennsylvania Survival Act, 42 Pa. C.S.A. §8302 et. seq. (hereinafter "Survival Act") and claims all damages recoverable under the Survival Act.

436. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Estate suffered damages and losses for the total amount Figueiredo would have earned between August 12, 2006 and his death.

437. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Estate has suffered losses for the total net amount Figueiredo would have earned between August 12, 2006 and the end of Figueiredo's work life expectancy subject to the cost of maintenance and support.

438. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Estate, is entitled to be fairly and adequately compensated for the mental and physical pain, suffering and inconvenience that Figueiredo endured from the moment of the August 12, 2006 injury to the moment of the August 12, 2006 death.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, General Motors Corporation, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XLVII - STRICT PRODUCTS LIABILITY**  
**FIGUEIREDO ADMINISTRATOR VS. OWNER**

439. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

440. Defendant, Owner, is strictly liable under Section 402(a) of the Restatement of the Law of Torts (Second) and is liable for the injuries and death of Figueiredo because:

(a) At all relevant times Defendant, Owner, was in the business of supplying Compass Tellurid tires and specifically, the Defective Tire;

(b) Defendant, Owner, expected the Defective Tire to reach the consumer without substantial change in the condition it was sold;

(c) The Defective Tire actually reached the consumer without substantial change in the condition in which it was sold;

(d) At or around the 23<sup>rd</sup> production week of 2004 and prior thereto, alternative safer, practical designs, manufacturing techniques and quality control systems for production of the Defective Tire existed.

441. Defendant, Owner, breached its duties and obligations under Section 402(a) of the Restatement of the Law of Torts (Second) by:

(a) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire with an inadequate inner liner (too thin) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(b) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire in such a condition that the rubber composition of the inner liner was inadequate

(not enough butyl) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(c) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire in such a condition that the wedging for stress reduction at belt edge was inadequate (too small), thereby causing tread-belt separation;

(d) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire in such a condition that the belt alignment is inadequate (misaligned), thereby causing tread-belt separation;

(e) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire in such a condition that the aging resistance is insufficient by reason of inadequate (not enough antidegradents; antioxidants and antiozonands), thereby causing tread-belt separation;

(f) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire in such a condition that the Defective Tire lacked nylon cap plies, thereby causing tread-belt separation;

(g) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire in such a condition that the tread-belt adhesion was inadequate, thereby causing tread-belt separation;

(h) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire in such a condition that the rubber materials and components of the Defective Tire were contaminated during production by oil water, dirt, perspiration, solvent, humidity and other debris, thereby causing tread-belt separation;

(i) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire in such a condition that the Defective Tire was stored inadequately (too long during the green phase), thereby causing tread-belt separation;

(j) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire in such a condition that the Defective Tire was handled inadequately (dropped during the green phase), thereby causing tread-belt separation;

(k) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire in such a condition that the Defective Tire was manufactured without adequate quality control, thereby causing tread-belt separation;

(l) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire in such a condition that the Defective Tire was manufactured without adequate testing, thereby causing tread-belt separation;

(m) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire in such a condition that the Defective Tire curing was inadequate (not hot enough and/or not long enough), thereby causing tread-belt separation;

(n) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire in such a condition that the Defective Tire lacked adequate warnings

(o) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire without implementation of alternative, safer, practical designs, manufacturing techniques and quality control systems;

(p) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire in a defective and unreasonably dangerous condition when it could have been designed and manufactured more safely;

(q) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire without adequate and proper testing;

(r) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire without proper quality control;

(s) Designing, manufacturing, assembling, selling, distributing and/or supplying the Defective Tire without adequate warning;

442. As a direct and proximate result of Defendant, Owner's, supplying of the Defective Tire and Defendant, Owner's corresponding violation of Section 402(a) of the Restatement of the Law of Torts (Second), on or about August 12, 2006, suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass to such an extent that it was wrapped around the axle and became lodged therein and the Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting with the driver's side on the pavement and the passenger side of the Defective Van facing upwards with such force as to cause Decedent multiple permanent and serious disfigurement and death.

443. As a direct and proximate result of the injuries and death, Figueiredo suffered great pain, anguish, sickness and agony.

444. As a direct and proximate result of the injuries and death, Figueiredo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

445. As a direct and proximate result of the injuries, Figueiredo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

446. As a direct and proximate result of these injuries, Figueiredo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Owner, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT XLIX - NEGLIGENCE**  
**FIGUEIREDO ADMINISTRATOR VS. OWNER**

447. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

448. On or about August 12, 2006, Defendant, Operator, carelessly and negligently operated and drove the Defective Van with the Defective Tire mounted on the left rear wheel within the posted speed limit in a southerly direction on Pennsylvania Route 476 approaching the 80 mile marker, when suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass to such an extent that it was wrapped around the axle and became lodged therein and the

Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting with the driver's side on the pavement and the passenger side of the vehicle facing upwards with such force as to cause Figueiredo serious and permanent injuries and/or death.

449. The negligence, carelessness and recklessness of Defendant, Owner, includes but is not limited to the following:

(a) Negligently entrusting the Defective Van to Defendant, Operator, thereby allowing Defendant, Operator, to fail to be highly vigilant and maintain sufficient control of the Defective Van;

(b) Negligently entrusting the Defective Van to Defendant, Operator, thereby allowing Defendant, Operator, to fail to keep the Defective Van under proper and adequate control;

(c) Failing to maintain the Defective Van and the Defective Tire in a safe and non-defective condition;

(d) Failing to warn;

(e) Failing to take reasonable action after the right rear tire detreaded;

450. As a direct and proximate result of the negligence and carelessness of Defendant, Owner, Figueiredo was caused to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and other conditions, thereby resulting in serious and permanent injuries and death.

451. As a direct and proximate result of the injuries and death, Figueiredo suffered great pain, anguish, sickness and agony.

**FTS 1047**

452. As a direct and proximate result of the injuries and death, Figueiredo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

453. As a direct and proximate result of the injuries, Figueiredo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

454. As a direct and proximate result of these injuries, Figueiredo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Owner, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT L - WRONGFUL DEATH**  
**FIGUEIREDO ADMINISTRATOR VS. OWNER**

455. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

456. As a direct and proximate result of Defendant, Owner's, negligence, negligence per se, carelessness and recklessness and liability pursuant to 402(A) of the Restatement of Torts

Second, on or about August 12, 2006, immediately following the failure of the Defective Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over, struck an embankment and failed to contain Figueiredo, thereby causing Figueiredo to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

457. Plaintiff brings this action on behalf of the Figueiredo Beneficiaries pursuant to the Pennsylvania Wrongful Death Act, 42 Pa. C.S.A. §8301 et. seq. (hereinafter "Wrongful Death Act") and claims all damages recoverable under the Pennsylvania Wrongful Death Act.

458. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries have been caused to incur and pay large and various expenses medical treatment rendered to Figueiredo until the time of his death and to incur various funeral, cremation and estate administration expenses for which Plaintiff is entitled to compensation in this proceeding along with all other damages recoverable under the Pennsylvania Wrongful Death Act.

459. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries suffered, are suffering and will for an indefinite period of time in the future suffer damages, injuries losses, including but not limited to, a loss of financial support, and the Figueiredo Beneficiaries have been wrongfully deprived of the contributions they would have received from Figueiredo, including monies which Figueiredo would have provided for items such as clothing, shelter, food, medical care, education, entertainment, recreation and gifts.

460. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of

the services, society and comfort which Figueiredo would have provided including work around the home, physical comforts and services, society and comfort.

461. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of the guidance, tutelage and moral upbringing which they would have received but for Figueiredo's wrongful death.

462. No recovery for any damages was made during Decedent's lifetime.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Owner, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LI - SURVIVAL ACT**  
**FIGUEIREDO ADMINISTRATOR VS. OWNER**

463. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

464 As a direct and proximate result of Defendant, Owner's, negligence, negligence per se, carelessness, recklessness and liability pursuant to 402(A) of the Restatement of Torts Second, on or about August 12, 2006, immediately following the failure of the Defective Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over, struck an embankment and failed to contain Figueiredo, thereby causing Figueiredo to sustain

multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

465. Plaintiff brings this action as Administrator of the Estate and on behalf of the Figueiredo Estate pursuant to the Pennsylvania Survival Act, 42 Pa. C.S.A. §8302 et. seq. (hereinafter "Survival Act") and claims all damages recoverable under the Survival Act.

466. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Estate suffered damages and losses for the total amount Figueiredo would have earned between August 12, 2006 and his death.

467. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Estate has suffered losses for the total net amount Figueiredo would have earned between August 12, 2006 and the end of Figueiredo's work life expectancy subject to the cost of maintenance and support.

468. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Estate, is entitled to be fairly and adequately compensated for the mental and physical pain, suffering and inconvenience that Figueiredo endured from the moment of the August 12, 2006 injury to the moment of the August 12, 2006 death.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Owner, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**FTS 1051**

**COUNT LII - STRICT PRODUCTS LIABILITY**  
**FIGUEIREDO ADMINISTRATOR VS. RETAILER**

469. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

470. Defendant, Retailer, is strictly liable under Section 402(a) of the Restatement of the Law of Torts (Second) and is liable for the injuries and death of Figueiredo because:

(a) At all relevant times Defendant, Retailer, was in the business of designing, manufacturing, assembling, selling and/or distributing Compass Tellurid tires and specifically, the Defective Tire;

(b) Defendant, Retailer, expected the Defective Tire to reach the consumer without substantial change in the condition it was sold;

(c) The Defective Tire actually reached the consumer without substantial change in the condition in which it was sold;

(d) At or around the 23<sup>rd</sup> production week of 2004 and prior thereto, alternative safer, practical designs, manufacturing techniques and quality control systems for production of the Defective Tire existed.

471. Defendant, Retailer, breached its duties and obligations under Section 402(a) of the Restatement of the Law of Torts (Second) by:

(a) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire with an inadequate inner liner (too thin) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(b) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that it failed to provide protection to Figueiredo against personal injury and death as a result of a motor vehicle collision;

(c) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the rubber composition of the inner liner was inadequate (not enough butyl) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(d) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the wedging for stress reduction at belt edge was inadequate (too small), thereby causing tread-belt separation;

(e) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the belt alignment is inadequate (misaligned), thereby causing tread-belt separation;

(f) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the aging resistance is insufficient by reason of inadequate (not enough antidegradents; antioxidants and antiozonands), thereby causing tread-belt separation;

(g) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire lacked nylon cap plys, thereby causing tread-belt separation;

(h) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the tread-belt adhesion was inadequate, thereby causing tread-belt separation;

(i) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the rubber materials and components of the Defective Tire were contaminated during production by oil water, dirt, perspiration, solvent, humidity and other debris, thereby causing tread-belt separation;

(j) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was stored inadequately (too long during the green phase), thereby causing tread-belt separation;

(k) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was handled inadequately (dropped during the green phase), thereby causing tread-belt separation;

(l) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was manufactured without adequate quality control, thereby causing tread-belt separation;

(m) designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was manufactured without adequate testing, thereby causing tread-belt separation;

(n) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire curing was inadequate (not hot enough and/or not long enough), thereby causing tread-belt separation;

(o) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without implementation of alternative, safer, practical designs, manufacturing techniques and quality control systems;

(p) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in a defective and unreasonably dangerous condition when it could have been designed and manufactured more safely;

(q) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without adequate and proper testing;

(r) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without proper quality control;

(s) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without adequate warning;

472. As a direct and proximate result of Defendant, Retailer's, designing, manufacturing, selling and/or distributing the Defective Tire and Defendant, Retailer's corresponding violation of Section 402(a) of the Restatement of the Law of Torts (Second) on or about August 12, 2006, suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass and became to such an extent that it was wrapped around the axle and became lodged therein and the Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting with the driver's side on the pavement and the passenger side of the Defective Van facing upwards with such force as to cause Figueiredo to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

473. As a direct and proximate result of the injuries and death, Figueiredo suffered great pain, anguish, sickness and agony.

474. As a direct and proximate result of the injuries and death, Figueiredo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

475. As a direct and proximate result of the injuries, Figueiredo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

476. As a direct and proximate result of these injuries, Figueiredo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Retailer, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LIII - NEGLIGENCE**  
**MELO ADMINISTRATOR VS. RETAILER**

477. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

478. Defendant, Retailer, negligently, carelessly and recklessly designed, manufactured, assembled, sold, and distributed the Defective Van in such a condition that on or about August 12,

2006, while the Defective Van was being operated in a southerly direction in the right lane of Pennsylvania Route 476, approaching the 80 mile marker, suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass to such an extent that it was wrapped around the axle and became lodged therein and the Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting position with the driver's side on the pavement and the passenger side of the Defective Van facing upwards.

479. The negligence, carelessness and recklessness of Defendant, Retailer, includes, but is not limited to the following:

(a) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire with an inadequate inner liner (too thin) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(b) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that it failed to provide protection to Figueiredo against personal injury and death as a result of a motor vehicle collision;

(c) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the rubber composition of the inner liner was inadequate (not enough butyl) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(d) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the wedging for stress reduction at belt edge was inadequate (too small), thereby causing tread-belt separation;

(e) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the belt alignment is inadequate (misaligned), thereby causing tread-belt separation;

(f) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the aging resistance is insufficient by reason of inadequate (not enough antidegradents; antioxidants and antiozonands), thereby causing tread-belt separation;

(g) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire lacked nylon cap plies, thereby causing tread-belt separation;

(h) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the tread-belt adhesion was inadequate, thereby causing tread-belt separation;

(i) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the rubber materials and components of the Defective Tire were contaminated during production by oil water, dirt, perspiration, solvent, humidity and other debris, thereby causing tread-belt separation;

(j) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was stored inadequately (too long during the green phase), thereby causing tread-belt separation;

(k) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was handled inadequately (dropped during the green phase), thereby causing tread-belt separation;

(l) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was manufactured without adequate quality control, thereby causing tread-belt separation;

(m) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was manufactured without adequate testing, thereby causing tread-belt separation;

(n) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire curing was inadequate (not hot enough and/or not long enough), thereby causing tread-belt separation;

(o) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire lacked adequate warnings;

(p) Failing to design, manufacture, assemble, sell and/or distribute the Defective Tire with implementation of alternative, safer, practical designs, manufacturing techniques and quality control systems;

(q) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in a defective and unreasonably dangerous condition when it could have been designed and manufactured more safely;

(r) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire without adequate and proper testing;

(s) Choosing to design, manufacture, assemble, sell and/or distribute the Defective Tire without proper quality control;

**FTS 1059**

(t) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire without adequate warning;

(u) Violating Federal Standards and Regulations and Statutes pertaining to the obligation of a tire manufacturer or distributor to recall or make modifications to its product after the manufacturer, distributor knows or should know of the defective nature of its tire;

(v) Violating Federal Regulations pertaining to tires and motor vehicles;

(w) Choosing not to warn of the defective conditions of the Defective Tire;

480. As a direct and proximate result of the negligence, negligence per se, carelessness and recklessness of Defendant, Retailer, Figueiredo was caused to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

481. As a direct and proximate result of the injuries and death, Figueiredo suffered great pain, anguish, sickness and agony.

482. As a direct and proximate result, the injuries and death, Figueiredo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

483. As a direct and proximate result of the injuries, Figueiredo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

484. As a direct and proximate result of these injuries, Figueiredo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Retailer, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LIV - BREACH OF WARRANTY**  
**FIGUEIREDO ADMINISTRATOR VS. RETAILER**

485. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

486. Defendant, Retailer, breached its warranties, both express and implied, that the Defective Van was safe and proper for its intended and foreseeable use and was designed and manufactured such that it would be safe for its intended use.

487. Defendant, Retailer, breached its warranties, both express and implied, by designing, manufacturing, assembling and selling the Defective Van such that it was unsafe, defective and of non-merchantable quality and not reasonably safe for the uses for which it was intended or for which was reasonably foreseeable.

488. As a direct and proximate result of Defendant, Retailer's, breach of its express and implied warranties, Figueiredo was caused to sustain multiple serious and permanent injuries, serious impairment bodily function, permanent and serious disfigurement, and death.

489. As a direct and proximate result of the injuries and death, Figueiredo suffered great pain, anguish, sickness and agony.

490. As a direct and proximate result, the injuries and death, Figueiredo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

491. As a direct and proximate result of the injuries, Figueiredo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

492. As a direct and proximate result of these injuries, Figueiredo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Retailer, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LV - WRONGFUL DEATH**  
**FIGUEIREDO ADMINISTRATOR V. RETAILER**

493. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

494. As a direct and proximate result of Defendant, Retailer's, negligence, negligence per se, carelessness and recklessness and liability pursuant to 402(A) of the Restatement of Torts

Second, on or about August 12, 2006, immediately following the failure of the Defective Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over, struck an embankment and failed to contain Figueiredo, thereby causing Figueiredo to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

495. Plaintiff brings this action on behalf of the Figueiredo Beneficiaries pursuant to the Pennsylvania Wrongful Death Act, 42 Pa. C.S.A. §8301 et. seq. (hereinafter "Wrongful Death Act") and claims all damages recoverable under the Pennsylvania Wrongful Death Act.

496. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries have been caused to incur and pay large and various expenses medical treatment rendered to Figueiredo until the time of his death and to incur various funeral, cremation and estate administration expenses for which Plaintiff is entitled to compensation in this proceeding along with all other damages recoverable under the Pennsylvania Wrongful Death Act.

497. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries suffered, are suffering and will for an indefinite period of time in the future suffer damages, injuries losses, including but not limited to, a loss of financial support, and the Figueiredo Beneficiaries have been wrongfully deprived of the contributions they would have received from Figueiredo, including monies which Figueiredo would have provided for items such as clothing, shelter, food, medical care, education, entertainment, recreation and gifts.

498. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of

the services, society and comfort which Figueiredo would have provided including work around the home, physical comforts and services, society and comfort.

499. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of the guidance, tutelage and moral upbringing which they would have received but for Figueiredo's wrongful death.

500. No recovery for any damages was made during Decedent's lifetime.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Retailer, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LVI - SURVIVAL ACT**  
**FIGUEIREDO ADMINISTRATOR VS. RETAILER**

501. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

502. As a direct and proximate result of Defendant, Retailer's, negligence, negligence per se, carelessness, recklessness and liability pursuant to 402(A) of the Restatement of Torts Second, on or about August 12, 2006, immediately following the failure of the Defective Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over, struck an embankment and failed to contain Figueiredo, thereby causing Figueiredo to sustain

multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

503. Plaintiff brings this action as Administrator of the Estate and on behalf of the Figueiredo Estate pursuant to the Pennsylvania Survival Act, 42 Pa. C.S.A. §8302 et. seq. (hereinafter "Survival Act") and claims all damages recoverable under the Survival Act.

504. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Estate suffered damages and losses for the total amount Figueiredo would have earned between August 12, 2006 and his death.

505. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Estate has suffered losses for the total net amount Figueiredo would have earned between August 12, 2006 and the end of Figueiredo's work life expectancy subject to the cost of maintenance and support.

506. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Estate, is entitled to be fairly and adequately compensated for the mental and physical pain, suffering and inconvenience that Figueiredo endured from the moment of the August 12, 2006 injury to the moment of the August 12, 2006 death.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Retailer, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LVII - STRICT PRODUCTS LIABILITY**  
**MELO ADMINISTRATOR VS. WHOLESALER**

507. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

508. Defendant, Wholesaler, is strictly liable under Section 402(a) of the Restatement of the Law of Torts (Second) and is liable for the injuries and death of Figueiredo because:

(a) At all relevant times Defendant, Wholesaler, was in the business of designing, manufacturing, assembling, selling and/or distributing Compass Tellurid tires and specifically, the Defective Tire;

(b) Defendant, Wholesaler, expected the Defective Tire to reach the consumer without substantial change in the condition it was sold;

(c) The Defective Tire actually reached the consumer without substantial change in the condition in which it was sold;

(d) At or around the 23<sup>rd</sup> production week of 2004 and prior thereto, alternative safer, practical designs, manufacturing techniques and quality control systems for production of the Defective Tire existed.

509. Defendant, Wholesaler, breached its duties and obligations under Section 402(a) of the Restatement of the Law of Torts (Second) by:

(a) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire with an inadequate inner liner (too thin) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(b) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that it failed to provide protection to Figueiredo against personal injury and death as a result of a motor vehicle collision;

(c) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the rubber composition of the inner liner was inadequate (not enough butyl) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(d) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the wedging for stress reduction at belt edge was inadequate (too small), thereby causing tread-belt separation;

(e) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the belt alignment is inadequate (misaligned), thereby causing tread-belt separation;

(f) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the aging resistance is insufficient by reason of inadequate (not enough antidegradents; antioxidants and antiozonands), thereby causing tread-belt separation;

(g) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire lacked nylon cap plies, thereby causing tread-belt separation;

(h) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the tread-belt adhesion was inadequate, thereby causing tread-belt separation;

(i) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the rubber materials and components of the Defective Tire were contaminated during production by oil water, dirt, perspiration, solvent, humidity and other debris, thereby causing tread-belt separation;

(j) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was stored inadequately (too long during the green phase), thereby causing tread-belt separation;

(k) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was handled inadequately (dropped during the green phase), thereby causing tread-belt separation;

(l) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was manufactured without adequate quality control, thereby causing tread-belt separation;

(m) designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was manufactured without adequate testing, thereby causing tread-belt separation;

(n) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire curing was inadequate (not hot enough and/or not long enough), thereby causing tread-belt separation;

(o) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without implementation of alternative, safer, practical designs, manufacturing techniques and quality control systems;

**FTS 1068**

(p) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in a defective and unreasonably dangerous condition when it could have been designed and manufactured more safely;

(q) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without adequate and proper testing;

(r) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without proper quality control;

(s) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without adequate warning;

510. As a direct and proximate result of Defendant, Wholesaler's, designing, manufacturing, selling and/or distributing the Defective Tire and Defendant, Wholesaler's corresponding violation of Section 402(a) of the Restatement of the Law of Torts (Second) on or about August 12, 2006, suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass and became to such an extent that it was wrapped around the axle and became lodged therein and the Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting with the driver's side on the pavement and the passenger side of the Defective Van facing upwards with such force as to cause Figueiredo multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

511. As a direct and proximate result of the injuries and death, Figueiredo suffered great pain, anguish, sickness and agony.

512. As a direct and proximate result of the injuries and death, Figueiredo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

513. As a direct and proximate result of the injuries, Figueiredo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

514. As a direct and proximate result of these injuries, Figueiredo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Wholesaler, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LVIII - NEGLIGENCE**  
**MELO ADMINISTRATOR VS. WHOLESALER**

515. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

516. Defendant, Wholesaler, negligently, carelessly and recklessly designed, manufactured, assembled, sold, and distributed the Defective Van in such a condition that on or about August 12,

2006, while the Defective Van was being operated in a southerly direction in the right lane of Pennsylvania Route 476, approaching the 80 mile marker, suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass to such an extent that it was wrapped around the axle and became lodged therein and the Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting position with the driver's side on the pavement and the passenger side of the Defective Van facing upwards.

517. The negligence, carelessness and recklessness of Defendant, Wholesaler, includes, but is not limited to the following:

(a) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire with an inadequate inner liner (too thin) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(b) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that it failed to provide protection to Figueiredo against personal injury and death as a result of a motor vehicle collision;

(c) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the rubber composition of the inner liner was inadequate (not enough butyl) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(d) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the wedging for stress reduction at belt edge was inadequate (too small), thereby causing tread-belt separation;

(e) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the belt alignment is inadequate (misaligned), thereby causing tread-belt separation;

(f) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the aging resistance is insufficient by reason of inadequate (not enough antidegradents; antioxidants and antiozonands), thereby causing tread-belt separation;

(g) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire lacked nylon cap plys, thereby causing tread-belt separation;

(h) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the tread-belt adhesion was inadequate, thereby causing tread-belt separation;

(i) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the rubber materials and components of the Defective Tire were contaminated during production by oil water, dirt, perspiration, solvent, humidity and other debris, thereby causing tread-belt separation;

(j) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was stored inadequately (too long during the green phase), thereby causing tread-belt separation;

(k) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was handled inadequately (dropped during the green phase), thereby causing tread-belt separation;

(l) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was manufactured without adequate quality control, thereby causing tread-belt separation;

(m) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was manufactured without adequate testing, thereby causing tread-belt separation;

(n) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire curing was inadequate (not hot enough and/or not long enough), thereby causing tread-belt separation;

(o) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire lacked adequate warnings;

(p) Failing to design, manufacture, assemble, sell and/or distribute the Defective Tire with implementation of alternative, safer, practical designs, manufacturing techniques and quality control systems;

(q) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in a defective and unreasonably dangerous condition when it could have been designed and manufactured more safely;

(r) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire without adequate and proper testing;

(s) Choosing to design, manufacture, assemble, sell and/or distribute the Defective Tire without proper quality control;

(t) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire without adequate warning;

(u) Violating Federal Standards and Regulations and Statutes pertaining to the obligation of a tire manufacturer or distributor to recall or make modifications to its product after the manufacturer, distributor knows or should know of the defective nature of its tire;

(v) Violating Federal Regulations pertaining to tires and motor vehicles;

(w) Choosing not to warn of the defective conditions of the Defective Tire;

518. As a direct and proximate result of the negligence, negligence per se, carelessness and recklessness of Defendant, Wholesaler, Figueiredo was caused to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

519. As a direct and proximate result of the injuries and death, Figueiredo suffered great pain, anguish, sickness and agony.

520. As a direct and proximate result, the injuries and death, Figueiredo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

521. As a direct and proximate result of the injuries, Figueiredo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

522. As a direct and proximate result of these injuries, Figueiredo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection

benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueriedo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Wholesaler, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LIX - BREACH OF WARRANTY**  
**MELO ADMINISTRATOR VS. WHOLESALER**

523. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

524. Defendant, Wholesaler, breached its warranties, both express and implied, that the Defective Van was safe and proper for its intended and foreseeable use and was designed and manufactured such that it would be safe for its intended use.

525. Defendant, Wholesaler, breached its warranties, both express and implied, by designing, manufacturing, assembling and selling the Defective Van such that it was unsafe, defective and of non-merchantable quality and not reasonably safe for the uses for which it was intended or for which was reasonably foreseeable.

526. As a direct and proximate result of Defendant, Wholesaler's, breach of its express and implied warranties, Figueiredo was caused to sustain multiple serious and permanent injuries, serious impairment bodily function, permanent and serious disfigurement, and death.

527. As a direct and proximate result of the injuries and death, Figueiredo suffered great pain, anguish, sickness and agony.

528. As a direct and proximate result, the injuries and death, Figueiredo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

529. As a direct and proximate result of the injuries, Figueiredo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

530. As a direct and proximate result of these injuries, Figueiredo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Wholesaler, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LX - WRONGFUL DEATH**  
**FIGUEIREDO ADMINISTRATOR V. WHOLESALER**

531. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

532. As a direct and proximate result of Defendant, Wholesaler's, negligence, negligence per se, carelessness and recklessness and liability pursuant to 402(A) of the Restatement of Torts Second, on or about August 12, 2006, immediately following the failure of the Defective Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over, struck an embankment and failed to contain Figueiredo, thereby causing Figueiredo to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

533. Plaintiff brings this action on behalf of the Figueiredo Beneficiaries pursuant to the Pennsylvania Wrongful Death Act, 42 Pa. C.S.A. §8301 et. seq. (hereinafter "Wrongful Death Act") and claims all damages recoverable under the Pennsylvania Wrongful Death Act.

534. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries have been caused to incur and pay large and various expenses medical treatment rendered to Figueiredo until the time of his death and to incur various funeral, cremation and estate administration expenses for which Plaintiff is entitled to compensation in this proceeding along with all other damages recoverable under the Pennsylvania Wrongful Death Act.

535. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries suffered, are suffering and will for an indefinite period of time in the future suffer damages, injuries losses, including but not limited to, a loss of financial support, and the Figueiredo Beneficiaries have been wrongfully deprived of the contributions they would have received from Figueiredo, including monies which Figueiredo would have provided for items such as clothing, shelter, food, medical care, education, entertainment, recreation and gifts.

536. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of the services, society and comfort which Figueiredo would have provided including work around the home, physical comforts and services, society and comfort.

537. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of the guidance, tutelage and moral upbringing which they would have received but for Figueiredo's wrongful death.

538. No recovery for any damages was made during Decedent's lifetime.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Wholesaler, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LXI - SURVIVAL ACT**  
**FIGUEIREDO ADMINISTRATOR VS. WHOLESALER**

539. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

540. As a direct and proximate result of Defendant, Wholesaler's, negligence, negligence per se, carelessness, recklessness and liability pursuant to 402(A) of the Restatement of Torts Second, on or about August 12, 2006, immediately following the failure of the Defective

Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over, struck an embankment and failed to contain Figueiredo, thereby causing Figueiredo to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

541. Plaintiff brings this action as Administrator of the Estate and on behalf of the Figueiredo Estate pursuant to the Pennsylvania Survival Act, 42 Pa. C.S.A. §8302 et. seq. (hereinafter "Survival Act") and claims all damages recoverable under the Survival Act.

542. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Estate suffered damages and losses for the total amount Figueiredo would have earned between August 12, 2006 and his death.

543. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Estate has suffered losses for the total net amount Figueiredo would have earned between August 12, 2006 and the end of Figueiredo's work life expectancy subject to the cost of maintenance and support.

544. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Estate, is entitled to be fairly and adequately compensated for the mental and physical pain, suffering and inconvenience that Figueiredo endured from the moment of the August 12, 2006 injury to the moment of the August 12, 2006 death.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Wholesaler, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with

interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LXII - STRICT PRODUCTS LIABILITY**  
**FIGUEIREDO ADMINISTRATOR VS. ALTERNATE WHOLESALER**

545. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

546. Defendant, Alternate Wholesaler, is strictly liable under Section 402(a) of the Restatement of the Law of Torts (Second) and is liable for the injuries and death Figueiredo because:

(a) At all relevant times Defendant, Alternate Wholesaler, was in the business of designing, manufacturing, assembling, selling and/or distributing Compass Tellurid tires and specifically, the Defective Tire;

(b) Defendant, Alternate Wholesaler, expected the Defective Tire to reach the consumer without substantial change in the condition it was sold;

(c) The Defective Tire actually reached the consumer without substantial change in the condition in which it was sold;

(d) At or around the 23<sup>rd</sup> production week of 2004 and prior thereto, alternative safer, practical designs, manufacturing techniques and quality control systems for production of the Defective Tire existed.

547. Defendant, Alternate Wholesaler, breached its duties and obligations under Section 402(a) of the Restatement of the Law of Torts (Second) by:

(a) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire with an inadequate inner liner (too thin) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(b) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that it failed to provide protection to Figueiredo against personal injury and death as a result of a motor vehicle collision;

(c) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the rubber composition of the inner liner was inadequate (not enough butyl) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(d) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the wedging for stress reduction at belt edge was inadequate (too small), thereby causing tread-belt separation;

(e) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the belt alignment is inadequate (misaligned), thereby causing tread-belt separation;

(f) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the aging resistance is insufficient by reason of inadequate (not enough antidegradents; antioxidants and antiozonands), thereby causing tread-belt separation;

(g) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire lacked nylon cap plies, thereby causing tread-belt separation;

(h) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the tread-belt adhesion was inadequate, thereby causing tread-belt separation;

(i) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the rubber materials and components of the Defective Tire were contaminated during production by oil water, dirt, perspiration, solvent, humidity and other debris, thereby causing tread-belt separation;

(j) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was stored inadequately (too long during the green phase), thereby causing tread-belt separation;

(k) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was handled inadequately (dropped during the green phase), thereby causing tread-belt separation;

(l) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was manufactured without adequate quality control, thereby causing tread-belt separation;

(m) designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was manufactured without adequate testing, thereby causing tread-belt separation;

(n) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire curing was inadequate (not hot enough and/or not long enough), thereby causing tread-belt separation;

(o) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without implementation of alternative, safer, practical designs, manufacturing techniques and quality control systems;

(p) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in a defective and unreasonably dangerous condition when it could have been designed and manufactured more safely;

(q) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without adequate and proper testing;

(r) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without proper quality control;

(s) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without adequate warning;

548. As a direct and proximate result of Defendant, Alternate Wholesaler's, designing, manufacturing, selling and/or distributing the Defective Tire and Defendant, Alternate Wholesaler's corresponding violation of Section 402(a) of the Restatement of the Law of Torts (Second) on or about August 12, 2006, suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass and became to such an extent that it was wrapped around the axle and became lodged therein and the Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting with the driver's side on the pavement and the passenger side of the Defective Van facing upwards with such force as to cause Figueiredo multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

549. As a direct and proximate result of the injuries and death, Figueiredo suffered great pain, anguish, sickness and agony.

550. As a direct and proximate result of the injuries and death, Figueiredo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

551. As a direct and proximate result of the injuries, Figueiredo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

552. As a direct and proximate result of these injuries, Figueiredo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Alternate Wholesaler, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LXIII - NEGLIGENCE**  
**FIGUEIREDO ADMINISTRATOR VS. ALTERNATE WHOLESALER**

553. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

554. Defendant, Alternate Wholesaler, negligently, carelessly and recklessly designed, manufactured, assembled, sold, and distributed the Defective Van in such a condition that on or about August 12, 2006, while the Defective Van was being operated in a southerly direction in the right lane of Pennsylvania Route 476, approaching the 80 mile marker, suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass to such an extent that it was wrapped around the axle and became lodged therein and the Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting position with the driver's side on the pavement and the passenger side of the Defective Van facing upwards.

555. The negligence, carelessness and recklessness of Defendant, Alternate Wholesaler, includes, but is not limited to the following:

(a) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire with an inadequate inner liner (too thin) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(b) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that it failed to provide protection to Figueiredo against personal injury and death as a result of a motor vehicle collision;

(c) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the rubber composition of the inner liner was inadequate (not enough butyl) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(d) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the wedging for stress reduction at belt edge was inadequate (too small), thereby causing tread-belt separation;

(e) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the belt alignment is inadequate (misaligned), thereby causing tread-belt separation;

(f) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the aging resistance is insufficient by reason of inadequate (not enough antidegradents; antioxidants and antiozonands), thereby causing tread-belt separation;

(g) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire lacked nylon cap plies, thereby causing tread-belt separation;

(h) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the tread-belt adhesion was inadequate, thereby causing tread-belt separation;

(i) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the rubber materials and components of the Defective Tire were contaminated during production by oil water, dirt, perspiration, solvent, humidity and other debris, thereby causing tread-belt separation;

(j) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was stored inadequately (too long during the green phase), thereby causing tread-belt separation;

(k) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was handled inadequately (dropped during the green phase), thereby causing tread-belt separation;

(l) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was manufactured without adequate quality control, thereby causing tread-belt separation;

(m) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was manufactured without adequate testing, thereby causing tread-belt separation;

(n) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire curing was inadequate (not hot enough and/or not long enough), thereby causing tread-belt separation;

(o) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire lacked adequate warnings;

(p) Failing to design, manufacture, assemble, sell and/or distribute the Defective Tire with implementation of alternative, safer, practical designs, manufacturing techniques and quality control systems;

(q) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in a defective and unreasonably dangerous condition when it could have been designed and manufactured more safely;

(r) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire without adequate and proper testing;

(s) Choosing to design, manufacture, assemble, sell and/or distribute the Defective Tire without proper quality control;

(t) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire without adequate warning;

(u) Violating Federal Standards and Regulations and Statutes pertaining to the obligation of a tire manufacturer or distributor to recall or make modifications to its product after the manufacturer, distributor knows or should know of the defective nature of its tire;

(v) Violating Federal Regulations pertaining to tires and motor vehicles;

(w) Choosing not to warn of the defective conditions of the Defective Tire;

556. As a direct and proximate result of the negligence, negligence per se, carelessness and recklessness of Defendant, Alternate Wholesaler, Figueiredo was caused to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

557. As a direct and proximate result of the injuries and death, Figueiredo suffered great pain, anguish, sickness and agony.

558. As a direct and proximate result, the injuries and death, Figueiredo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

559. As a direct and proximate result of the injuries, Figueiredo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

560. As a direct and proximate result of these injuries, Figueiredo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Alternate Wholesaler, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LXIV - BREACH OF WARRANTY**  
**FIGUEIREDO ADMINISTRATOR VS. ALTERNATE WHOLESALER**

561. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

562. Defendant, Alternate Wholesaler, breached its warranties, both express and implied, that the Defective Van was safe and proper for its intended and foreseeable use and was designed and manufactured such that it would be safe for its intended use.

563. Defendant, Alternate Wholesaler, breached its warranties, both express and implied, by designing, manufacturing, assembling and selling the Defective Van such that it was unsafe, defective and of non-merchantable quality and not reasonably safe for the uses for which it was intended or for which was reasonably foreseeable.

564. As a direct and proximate result of Defendant, Alternate Wholesaler's, breach of its express and implied warranties, Figueiredo was caused to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

565. As a direct and proximate result of the injuries and death, Figueiredo suffered great pain, anguish, sickness and agony.

566. As a direct and proximate result, the injuries and death, Figueiredo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

567. As a direct and proximate result of the injuries, Figueiredo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

568. As a direct and proximate result of these injuries, Figueiredo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Alternate Wholesaler, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LXV - WRONGFUL DEATH**  
**MELO ADMINISTRATOR V. ALTERNATE WHOLESALER**

569. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

570. As a direct and proximate result of Defendant, Alternate Wholesaler's, negligence, negligence per se, carelessness and recklessness and liability pursuant to 402(A) of the Restatement of Torts Second, on or about August 12, 2006, immediately following the failure of the Defective Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over, struck an embankment and failed to contain Figueiredo, thereby causing Figueiredo to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

571. Plaintiff brings this action on behalf of the Figueiredo Beneficiaries pursuant to the Pennsylvania Wrongful Death Act, 42 Pa. C.S.A. §8301 et. seq. (hereinafter "Wrongful Death Act") and claims all damages recoverable under the Pennsylvania Wrongful Death Act.

572. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries have been caused to incur and pay large and various expenses medical treatment rendered to Figueiredo until the time of his death and to incur various funeral, cremation and estate administration expenses for which Plaintiff is entitled to compensation in this proceeding along with all other damages recoverable under the Pennsylvania Wrongful Death Act.

573. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries suffered, are suffering and will for an indefinite period of time in the future suffer damages, injuries losses, including but not limited to, a loss of financial support, and the

Figueiredo Beneficiaries have been wrongfully deprived of the contributions they would have received from Figueiredo, including monies which Figueiredo would have provided for items such as clothing, shelter, food, medical care, education, entertainment, recreation and gifts.

574. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of the services, society and comfort which Figueiredo would have provided including work around the home, physical comforts and services, society and comfort.

575. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of the guidance, tutelage and moral upbringing which they would have received but for Figueiredo's wrongful death.

576. No recovery for any damages was made during Decedent's lifetime.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Alternate Wholesaler, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LXVI - SURVIVAL ACT**  
**FIGUEIREDO ADMINISTRATOR VS. ALTERNATE WHOLESALER**

577. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

578. As a direct and proximate result of Defendant, Alternate Wholesaler's, negligence, negligence per se, carelessness, recklessness and liability pursuant to 402(A) of the Restatement of Torts Second, on or about August 12, 2006, immediately following the failure of the Defective Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over, struck an embankment and failed to contain Figueiredo, thereby causing Figueiredo to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

579. Plaintiff brings this action as Administrator of the Estate and on behalf of the Figueiredo Estate pursuant to the Pennsylvania Survival Act, 42 Pa. C.S.A. §8302 et. seq. (hereinafter "Survival Act") and claims all damages recoverable under the Survival Act.

580. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Estate suffered damages and losses for the total amount Figueiredo would have earned between August 12, 2006 and his death.

581. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Estate has suffered losses for the total net amount Figueiredo would have earned between August 12, 2006 and the end of Figueiredo's work life expectancy subject to the cost of maintenance and support.

582. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo, is entitled to be fairly and adequately compensated for the mental and physical pain, suffering and inconvenience that Figueiredo endured from the moment of the August 12, 2006 injury to the moment of the August 12, 2006 death.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Alternate Wholesaler, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LXVII - STRICT PRODUCTS LIABILITY**  
**FIGUEIREDO ADMINISTRATOR VS. FTS**

583. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

584. Defendant, FTS, is strictly liable under Section 402(a) of the Restatement of the Law of Torts (Second) and is liable for the injuries and death of Figueiredo because:

(a) At all relevant times Defendant, FTS, was in the business of designing, manufacturing, assembling, selling and/or distributing Compass Tellurid tires and specifically, the Defective Tire;

(b) Defendant, FTS, expected the Defective Tire to reach the consumer without substantial change in the condition it was sold;

(c) The Defective Tire actually reached the consumer without substantial change in the condition in which it was sold;

(d) At or around the 23<sup>rd</sup> production week of 2004 and prior thereto, alternative safer, practical designs, manufacturing techniques and quality control systems for production of the Defective Tire existed.

584. Defendant, FTS, breached its duties and obligations under Section 402(a) of the Restatement of the Law of Torts (Second) by:

(a) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire with an inadequate inner liner (too thin) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(b) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that it failed to provide protection to Figueiredo against personal injury and death as a result of a motor vehicle collision;

(c) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the rubber composition of the inner liner was inadequate (not enough butyl) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(d) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the wedging for stress reduction at belt edge was inadequate (too small), thereby causing tread-belt separation;

(e) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the belt alignment is inadequate (misaligned), thereby causing tread-belt separation;

(f) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the aging resistance is insufficient by reason of inadequate (not enough antidegradents; antioxidants and antiozonands), thereby causing tread-belt separation;

(g) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire lacked nylon cap plies, thereby causing tread-belt separation;

(h) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the tread-belt adhesion was inadequate, thereby causing tread-belt separation;

(i) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the rubber materials and components of the Defective Tire were contaminated during production by oil water, dirt, perspiration, solvent, humidity and other debris, thereby causing tread-belt separation;

(j) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was stored inadequately (too long during the green phase), thereby causing tread-belt separation;

(k) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was handled inadequately (dropped during the green phase), thereby causing tread-belt separation;

(l) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was manufactured without adequate quality control, thereby causing tread-belt separation;

(m) designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was manufactured without adequate testing, thereby causing tread-belt separation;

(n) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire curing was inadequate (not hot enough and/or not long enough), thereby causing tread-belt separation;

(o) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without implementation of alternative, safer, practical designs, manufacturing techniques and quality control systems;

(p) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in a defective and unreasonably dangerous condition when it could have been designed and manufactured more safely;

(q) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without adequate and proper testing;

(r) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without proper quality control;

(s) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without adequate warning;

585. As a direct and proximate result of Defendant, FTS's, designing, manufacturing, selling and/or distributing the Defective Tire and Defendant, FTS's corresponding violation of Section 402(a) of the Restatement of the Law of Torts (Second) on or about August 12, 2006, suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass and became to such an extent that it was wrapped around the axle and became lodged therein and the Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting with the driver's side on the pavement and the passenger

side of the Defective Van facing upwards with such force as to cause Figueiredo to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

586. As a direct and proximate result of the injuries and death, Figueiredo suffered great pain, anguish, sickness and agony.

587. As a direct and proximate result of the injuries and death, Figueiredo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

588. As a direct and proximate result of the injuries, Figueiredo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

589. As a direct and proximate result of these injuries, Figueiredo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, FTS, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LXVIII - NEGLIGENCE**  
**FIGUEIREDO ADMINISTRATOR VS. FTS**

590. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

591. Defendant, FTS, negligently, carelessly and recklessly designed, manufactured, assembled, sold, and distributed the Defective Van in such a condition that on or about August 12, 2006, while the Defective Van was being operated in a southerly direction in the right lane of Pennsylvania Route 476, approaching the 80 mile marker, suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass to such an extent that it was wrapped around the axle and became lodged therein and the Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting position with the driver's side on the pavement and the passenger side of the Defective Van facing upwards.

592. The negligence, carelessness and recklessness of Defendant, FTS, includes, but is not limited to the following:

(a) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire with an inadequate inner liner (too thin) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(b) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that it failed to provide protection to Figueiredo against personal injury and death as a result of a motor vehicle collision;

**FTS 1099**

(c) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the rubber composition of the inner liner was inadequate (not enough butyl) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(d) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the wedging for stress reduction at belt edge was inadequate (too small), thereby causing tread-belt separation;

(e) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the belt alignment is inadequate (misaligned), thereby causing tread-belt separation;

(f) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the aging resistance is insufficient by reason of inadequate (not enough antidegradents; antioxidants and antiozonands), thereby causing tread-belt separation;

(g) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire lacked nylon cap plys, thereby causing tread-belt separation;

(h) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the tread-belt adhesion was inadequate, thereby causing tread-belt separation;

(i) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the rubber materials and components of the Defective Tire were

contaminated during production by oil water, dirt, perspiration, solvent, humidity and other debris, thereby causing tread-belt separation;

(j) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was stored inadequately (too long during the green phase), thereby causing tread-belt separation;

(k) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was handled inadequately (dropped during the green phase), thereby causing tread-belt separation;

(l) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was manufactured without adequate quality control, thereby causing tread-belt separation;

(m) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was manufactured without adequate testing, thereby causing tread-belt separation;

(n) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire curing was inadequate (not hot enough and/or not long enough), thereby causing tread-belt separation;

(o) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire lacked adequate warnings;

(p) Failing to design, manufacture, assemble, sell and/or distribute the Defective Tire with implementation of alternative, safer, practical designs, manufacturing techniques and quality control systems;

(q) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in a defective and unreasonably dangerous condition when it could have been designed and manufactured more safely;

(r) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire without adequate and proper testing;

(s) Choosing to design, manufacture, assemble, sell and/or distribute the Defective Tire without proper quality control;

(t) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire without adequate warning;

(u) Violating Federal Standards and Regulations and Statutes pertaining to the obligation of a tire manufacturer or distributor to recall or make modifications to its product after the manufacturer, distributor knows or should know of the defective nature of its tire;

(v) Violating Federal Regulations pertaining to tires and motor vehicles;

(w) Choosing not to warn of the defective conditions of the Defective Tire;

593. As a direct and proximate result of the negligence, negligence per se, carelessness and recklessness of Defendant, FTS, Figueiredo was caused to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

594. As a direct and proximate result of the injuries and death, Figueiredo suffered great pain, anguish, sickness and agony.

595. As a direct and proximate result, the injuries and death, Figueiredo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

596. As a direct and proximate result of the injuries, Figueiredo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

597. As a direct and proximate result of these injuries, Figueiredo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, FTS, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LXIXI - BREACH OF WARRANTY**  
**FIGUEIREDO ADMINISTRATOR VS. FTS**

598. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

599. Defendant, FTS, breached its warranties, both express and implied, that the Defective Van was safe and proper for its intended and foreseeable use and was designed and manufactured such that it would be safe for its intended use.

600. Defendant, FTS, breached its warranties, both express and implied, by designing, manufacturing, assembling and selling the Defective Van such that it was unsafe, defective and of

non-merchantable quality and not reasonably safe for the uses for which it was intended or for which was reasonably foreseeable.

601. As a direct and proximate result of Defendant, FTS's, breach of its express and implied warranties, Figueiredo was caused to sustain multiple serious and permanent injuries, serious impairment bodily function, permanent and serious disfigurement and death.

602. As a direct and proximate result of the injuries and death, Figueiredo suffered great pain, anguish, sickness and agony.

603. As a direct and proximate result, the injuries and death, Figueiredo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

604. As a direct and proximate result of the injuries, Figueiredo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

605. As a direct and proximate result of these injuries, Figueiredo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, FTS, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with

interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LXX - WRONGFUL DEATH**  
**FIGUEIREDO ADMINISTRATOR V. FTS**

606. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

607. As a direct and proximate result of Defendant, FTS's, negligence, negligence per se, carelessness and recklessness and liability pursuant to 402(A) of the Restatement of Torts Second, on or about August 12, 2006, immediately following the failure of the Defective Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over, struck an embankment and failed to contain Figueiredo, thereby causing Figueiredo to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

608. Plaintiff brings this action on behalf of the Figueiredo Beneficiaries pursuant to the Pennsylvania Wrongful Death Act, 42 Pa. C.S.A. §8301 et. seq. (hereinafter "Wrongful Death Act") and claims all damages recoverable under the Pennsylvania Wrongful Death Act.

609. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries have been caused to incur and pay large and various expenses medical treatment rendered to Figueiredo until the time of his death and to incur various funeral, cremation and estate administration expenses for which Plaintiff is entitled to compensation in this proceeding along with all other damages recoverable under the Pennsylvania Wrongful Death Act.

610. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries suffered, are suffering and will for an indefinite period of time in the future suffer damages, injuries losses, including but not limited to, a loss of financial support, and the Figueiredo Beneficiaries have been wrongfully deprived of the contributions they would have received from Figueiredo, including monies which Figueiredo would have provided for items such as clothing, shelter, food, medical care, education, entertainment, recreation and gifts.

611. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of the services, society and comfort which Figueiredo would have provided including work around the home, physical comforts and services, society and comfort.

612. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Beneficiaries have been, continue to be and will be in the future wrongfully deprived of the guidance, tutelage and moral upbringing which they would have received but for Figueiredo's wrongful death.

613. No recovery for any damages was made during Decedent's lifetime.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, FTS, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LXXI - SURVIVAL ACT**  
**FIGUEIREDO ADMINISTRATOR VS. FTS**

614. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

615. As a direct and proximate result of Defendant, FTS's, negligence, negligence per se, carelessness, recklessness and liability pursuant to 402(A) of the Restatement of Torts Second, on or about August 12, 2006, immediately following the failure of the Defective Tire by tread-belt separation, the Defective Van swerved out of control, across the highway, rolled over, struck an embankment and failed to contain Figueiredo, thereby causing Figueiredo to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

616. Plaintiff brings this action as Administrator of the Estate and on behalf of the Figueiredo Estate pursuant to the Pennsylvania Survival Act, 42 Pa. C.S.A. §8302 et. seq. (hereinafter "Survival Act") and claims all damages recoverable under the Survival Act.

617. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Estate suffered damages and losses for the total amount Figueiredo would have earned between August 12, 2006 and his death.

618. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Estate has suffered losses for the total net amount Figueiredo would have earned between August 12, 2006 and the end of Figueiredo's work life expectancy subject to the cost of maintenance and support.

619. As a direct and proximate result of the injuries and death of Figueiredo, the Figueiredo Estate, is entitled to be fairly and adequately compensated for the mental and physical pain, suffering and inconvenience that Figueiredo endured from the moment of the August 12, 2006 injury to the moment of the August 12, 2006 death.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, FTS, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LXXII - STRICT PRODUCTS LIABILITY**  
**FIGUEIREDO ADMINISTRATOR VS. KUSKIN**

620. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

621. Defendant, Kuskin, is strictly liable under Section 402(a) of the Restatement of the Law of Torts (Second) and is liable for the injuries and death of Figueiredo because:

(a) At all relevant times Defendant, Kuskin, was in the business of designing, manufacturing, assembling, selling and/or distributing Compass Tellurid tires and specifically, the Defective Tire;

(b) Defendant, Kuskin, expected the Defective Tire to reach the consumer without substantial change in the condition it was sold;

**FTS 1108**

(c) The Defective Tire actually reached the consumer without substantial change in the condition in which it was sold;

(d) At or around the 23<sup>rd</sup> production week of 2004 and prior thereto, alternative safer, practical designs, manufacturing techniques and quality control systems for production of the Defective Tire existed.

622. Defendant, Kuskin, breached its duties and obligations under Section 402(a) of the Restatement of the Law of Torts (Second) by:

(a) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire with an inadequate inner liner (too thin) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(b) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that it failed to provide protection to Figueiredo against personal injury and death as a result of a motor vehicle collision;

(c) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the rubber composition of the inner liner was inadequate (not enough butyl) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(d) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the wedging for stress reduction at belt edge was inadequate (too small), thereby causing tread-belt separation;

(e) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the belt alignment is inadequate (misaligned), thereby causing tread-belt separation;

(f) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the aging resistance is insufficient by reason of inadequate (not enough antidegradents; antioxidants and antiozonands), thereby causing tread-belt separation;

(g) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire lacked nylon cap plies, thereby causing tread-belt separation;

(h) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the tread-belt adhesion was inadequate, thereby causing tread-belt separation;

(i) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the rubber materials and components of the Defective Tire were contaminated during production by oil water, dirt, perspiration, solvent, humidity and other debris, thereby causing tread-belt separation;

(j) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was stored inadequately (too long during the green phase), thereby causing tread-belt separation;

(k) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was handled inadequately (dropped during the green phase), thereby causing tread-belt separation;

(l) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was manufactured without adequate quality control, thereby causing tread-belt separation;

(m) designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire was manufactured without adequate testing, thereby causing tread-belt separation;

(n) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in such a condition that the Defective Tire curing was inadequate (not hot enough and/or not long enough), thereby causing tread-belt separation;

(o) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without implementation of alternative, safer, practical designs, manufacturing techniques and quality control systems;

(p) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire in a defective and unreasonably dangerous condition when it could have been designed and manufactured more safely;

(q) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without adequate and proper testing;

(r) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without proper quality control;

(s) Designing, manufacturing, assembling, selling and/or distributing the Defective Tire without adequate warning;

623. As a direct and proximate result of Defendant, Kuskin's, designing, manufacturing, selling and/or distributing the Defective Tire and Defendant, Kuskin's corresponding violation of Section 402(a) of the Restatement of the Law of Torts (Second) on or about August 12, 2006, suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass and became to such an extent that it was wrapped around the axle and became lodged therein and the Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting with the driver's side on the pavement and the passenger side of the Defective Van facing upwards with such force as to cause Figueiredo to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

624. As a direct and proximate result of the injuries and death, Figueiredo suffered great pain, anguish, sickness and agony.

625. As a direct and proximate result of the injuries and death, Figueiredo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

626. As a direct and proximate result of the injuries, Figueiredo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

627. As a direct and proximate result of these injuries, Figueiredo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**FTS 1112**

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Kuskin, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LXXIII - NEGLIGENCE**  
**FIGUEIREDO ADMINISTRATOR VS. KUSKIN**

628. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

629. Defendant, Kuskin, negligently, carelessly and recklessly designed, manufactured, assembled, sold, and distributed the Defective Van in such a condition that on or about August 12, 2006, while the Defective Van was being operated in a southerly direction in the right lane of Pennsylvania Route 476, approaching the 80 mile marker, suddenly and without warning, the tread of the Defective Tire separated from the belt and carcass to such an extent that it was wrapped around the axle and became lodged therein and the Defective Van swayed and swerved across the highway out of control, rolled over, struck an embankment and came to a final resting position with the driver's side on the pavement and the passenger side of the Defective Van facing upwards.

630. The negligence, carelessness and recklessness of Defendant, Kuskin, includes, but is not limited to the following:

**FTS 1113**

(a) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire with an inadequate inner liner (too thin) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(b) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that it failed to provide protection to Figueiredo against personal injury and death as a result of a motor vehicle collision;

(c) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the rubber composition of the inner liner was inadequate (not enough butyl) allowing oxygen to escape and degrade the Defective Tire, thereby causing tread-belt separation;

(d) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the wedging for stress reduction at belt edge was inadequate (too small), thereby causing tread-belt separation;

(e) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the belt alignment is inadequate (misaligned), thereby causing tread-belt separation;

(f) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the aging resistance is insufficient by reason of inadequate (not enough antidegradents; antioxidants and antiozonands), thereby causing tread-belt separation;

(g) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire lacked nylon cap plies, thereby causing tread-belt separation;

(h) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the tread-belt adhesion was inadequate, thereby causing tread-belt separation;

(i) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the rubber materials and components of the Defective Tire were contaminated during production by oil water, dirt, perspiration, solvent, humidity and other debris, thereby causing tread-belt separation;

(j) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was stored inadequately (too long during the green phase), thereby causing tread-belt separation;

(k) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was handled inadequately (dropped during the green phase), thereby causing tread-belt separation;

(l) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was manufactured without adequate quality control, thereby causing tread-belt separation;

(m) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire was manufactured without adequate testing, thereby causing tread-belt separation;

(n) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire curing was inadequate (not hot enough and/or not long enough), thereby causing tread-belt separation;

(o) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in such a condition that the Defective Tire lacked adequate warnings;

(p) Failing to design, manufacture, assemble, sell and/or distribute the Defective Tire with implementation of alternative, safer, practical designs, manufacturing techniques and quality control systems;

(q) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire in a defective and unreasonably dangerous condition when it could have been designed and manufactured more safely;

(r) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire without adequate and proper testing;

(s) Choosing to design, manufacture, assemble, sell and/or distribute the Defective Tire without proper quality control;

(t) Choosing to design, manufacture, assemble, sell and distribute the Defective Tire without adequate warning;

(u) Violating Federal Standards and Regulations and Statutes pertaining to the obligation of a tire manufacturer or distributor to recall or make modifications to its product after the manufacturer, distributor knows or should know of the defective nature of its tire;

(v) Violating Federal Regulations pertaining to tires and motor vehicles;

(w) Choosing not to warn of the defective conditions of the Defective Tire;

631. As a direct and proximate result of the negligence, negligence per se, carelessness and recklessness of Defendant, Kuskin, Figueiredo was caused to sustain multiple serious and permanent injuries, serious impairment of bodily function, permanent and serious disfigurement and death.

642. As a direct and proximate result of the injuries and death, Figueiredo suffered great pain, anguish, sickness and agony.

643. As a direct and proximate result, the injuries and death, Figueiredo suffered emotional injuries, mental anguish, humiliation, loss of life's pleasures, loss of hedonic pleasures, and the inability to attend to social and work obligations.

644. As a direct and proximate result of the injuries, Figueiredo has undergone a great loss of earnings and earning capacity and by the reason of the death has sustained a great loss of all future earnings and earning capacity.

645. As a direct and proximate result of these injuries, Figueiredo has incurred medical, rehabilitative and other related expenses in excess of the basic personal injury protection benefits required by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1701 et seq. as amended, which is hereby claimed in this action.

**WHEREFORE**, Plaintiff, Robert E. McCulley, Administrator of the Estate of Claudeir Jose Figueiredo, Deceased, respectfully requests this Honorable Court enter judgment in his favor and against Defendant, Kuskin, Individually and Jointly and Severally with Defendants in an amount to exceed the jurisdictional Arbitration limit of Fifty Thousand Dollars (\$50,000.00), together with interest, costs, punitive damages, delay damages, attorney's fees and any or further relief this Honorable Court may deem just and proper.

**COUNT LXXIV - BREACH OF WARRANTY**  
**FIGUEIREDO ADMINISTRATOR VS. KUSKIN**

646. Plaintiff hereby incorporates all matter stated elsewhere in this pleading as if fully set forth herein at length.

FTS 1117