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2022 Oct 18 AM 11:47

CLERK OF THE DOUGLAS COUNTY DISTRICT COURT
CASE NUMBER: 2022-CV-000354

Jillian Tinkel et. al.

vs.

Mark Stanwix et. al.

SUMMONS

Chapter 60 - Service by Attorney or Process Server

To the above-named Defendant/Respondent:

Mark Stanwix, Sr.
619 Whitfield St., Lot C
Lecom, KS 66050

You are hereby notified that an action has been commenced against you in this court. You are required to file your answer or motion under K.S.A. 60-212, and amendments thereto, to the petition with the court and to serve a copy upon:

Thomas J. Dickerson
1200 Main Street
Suite 2120
Kansas City, MO 64105

within 30 days after service of summons on you.

Clerk of the District Court

Electronically signed on 10/18/2022 02:56:10 PM

Documents to be served with the Summons:

PLE: Petition Petition for Damages for Personal Injury and Wrongful Death

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Jillian Tinkel et. al.

vs.

Mark Stanwix et. al.

SUMMONS

Chapter 60 - Service by Attorney or Process Server

To the above-named Defendant/Respondent:

Midwest Concrete Materials, Inc.

Serve Registered Agent

Robert H. Eichman

701 South 4th St.

Manhattan, KS 66502

You are hereby notified that an action has been commenced against you in this court. You are required to file your answer or motion under K.S.A. 60-212, and amendments thereto, to the petition with the court and to serve a copy upon:

Thomas J. Dickerson

1200 Main Street

Suite 2120

Kansas City, MO 64105

within 30 days after service of summons on you.



Clerk of the District Court

Electronically signed on 10/18/2022 02:56:10 PM

Documents to be served with the Summons:

PLE: Petition Petition for Damages for Personal Injury and Wrongful Death

**IN THE 7TH JUDICIAL DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
CIVIL DEPARTMENT**

JILLIAN TINKEL, in her personal capacity,)	
heir at law of Randy Tinkel, heir at law of)	
minor K.R.T., as natural parent / next friend)	
of K.H.T., and as Personal Representative of)	
the Estate of K.R.T.;	)	Cause No. _____
)	
and	)	K.S.A. Chapter 60
)	
K.H.T. a minor, through his natural parent /	)	Div. _____
guardian / next friend JILLIAN TINKEL;)	
)	
and)	
)	
THE ESTATE OF K.R.T., through its)	
Personal Representative JILLIAN TINKEL;')	
)	
and)	
)	
MEGAN SCHINDLER)	
)	
Plaintiffs,)	
v.)	
)	
MARK STANWIX, SR.,)	
Serve at:)	
619 Whitfield St., Lot 6C)	
Lecompton, KS 66050)	
)	
and)	
)	
MIDWEST CONCRETE MATERIALS,)	
INC.,)	
Serve Registered Agent:)	
Robert H. Eichman)	
701 South 4th St.)	
Manhattan, KS 66502)	
)	
)	
Defendants.)	
)	

PETITION FOR DAMAGES FOR PERSONAL INJURY AND WRONGFUL DEATH

Plaintiffs Jillian Tinkel, in her personal capacity. as heir at law of Randy Tinkel and K.R.T., and as Personal Representative of the Estate of K.R.T.; K.H.T., through his natural parent / next friend Jillian Tinkel; and Megan Schindler, by and through their respective counsel of record, hereby submit Plaintiffs'

Petition for Damages for Personal Injury and Wrongful Death against Defendant Mark Stanwix, Sr. (hereinafter “Defendant Stanwix”) and Defendant Midwest Concrete Materials, Inc. (hereinafter, “Defendant MCM”), and in support of their respective causes of action, state the following.

PARTIES

1. Plaintiff Jillian Tinkel is an individual and resident of Pottawatomie County, Kansas.
2. Randy Tinkel is the deceased spouse of Jillian Tinkel, and was age 37 at the time of his death.
3. Minor K.R.T. is the deceased minor child of Randy Tinkel and Plaintiff Jillian Tinkel, and was age 7 at the time of his death.
4. Minor K.H.T. is the living minor child of Randy Tinkel and Plaintiff Jillian Tinkel, currently age 2, and a resident of Pottawatomie County, Kansas.
5. The Estate of K.R.T. is an estate duly opened and existing pursuant Kansas law whose appointed Personal Representative is Plaintiff Jillian Tinkel.
6. Plaintiff Megan Schindler is a married individual and resident of Pottawatomie County, Kansas.
7. Defendant Martin Stanwix, Sr., is an individual and resident of in Douglas County, Kansas.
8. Defendant Midwest Concrete Materials, Inc., is a Kansas corporation duly incorporated under the laws of the state of Kansas with its headquarters in Riley County, Kansas, and conducting business in and with offices in Douglas County, Kansas.

JURISDICTION AND VENUE

9. Venue is proper in this Court pursuant K.S.A. § 60-603(1), as Mark Stanwix, Sr., is a Kansas resident currently residing in the City of Lecompton, Douglas County, Kansas.
10. Venue is proper in this Court pursuant K.S.A. § 60-608 as to Midwest Concrete Materials, Inc., as Mark Stanwix, Sr.’s actions as a truck driver for Midwest Concrete Materials, Inc. constitute a substantial part of the Plaintiffs’ claims as set forth below.

11. Jurisdiction is proper in this matter pursuant KSA § 60-308 *et seq.* as the Defendants are domiciled and /or reside in, transacted business in, and committed tortious acts in the State of Kansas.

**FACTS COMMON TO ALL COUNTS
THE COLLISION**

12. Plaintiffs hereby incorporate by reference all of the preceding allegations of the Petition as if fully set forth herein.

13. On August 10, 2022, at approximately 5:33 p.m., Randy Tinkel was the driver of a 2013 Ford F-250 Super Duty (hereinafter the “Tinkel Vehicle”).

14. At the same date and time, Randy Tinkel and Plaintiff Jillian Tinkel’s minor children, K.H.T. and K.R.T., were passengers in the Tinkel Vehicle.

15. The Tinkel Vehicle was eastbound on US Highway 24 at approximately milepost 332.9 or approximately .4 miles west of Airport Road.

16. US Highway 24 at this location is a two lane divided highway with one lane for eastbound traffic and one lane for westbound traffic.

17. The Tinkel Vehicle was stopped waiting for westbound traffic to clear before making a left hand turn into the business parking lot of RT Trucking.

18. At the same date and time, Plaintiff Megan Schindler, was the driver of a 2008 Ford Edge (hereinafter the “Schindler Vehicle”).

19. The Schindler Vehicle was traveling eastbound on US Highway 24 at approximately milepost 332.9 or approximately .4 miles West of Airport Road behind the Tinkel Vehicle.

20. The Schindler Vehicle was in the process of slowing to a stop behind the Tinkel Vehicle.

21. At that same date and time, Defendant Mark Stanwix, Sr. was the driver of a 2015 Western Semi Truck (hereinafter the “MCM CMV”).

22. The MCM CMV was hauling a trailer eastbound on US Highway 24 at approximately milepost 332.9 or approximately .4 miles West of Airport Road, behind the Tinkel Vehicle and Schindler Vehicle.

23. As Defendant Stanwix and the MCM CMV he was operating approached the Schindler Vehicle and Tinkel Vehicles, Defendant Stanwix did not brake or slow, and collided into the rear of the Tinkel Vehicle and Schindler Vehicle.

24. The MCM CMV first collided with the Schindler Vehicle, and then collided with the Tinkel Vehicle.

25. At the time of the impact, the MCM CMV was traveling approximately 67 miles per hour with cruise control engaged.

26. Upon information and belief, Defendant Stanwix was texting or otherwise using his hand-held mobile telephone at the time of the collision.

27. Collectively, these events described in paragraphs 12 through 26 are hereinafter referred to as “the Collision”.

28. Upon Defendant Stanwix and the MCM CMV colliding with the Tinkel Vehicle, Randy Tinkel was alive, but unconscious and critically injured.

29. Randy Tinkel never regained consciousness and died at the scene of the collision on August 10, 2022.

30. Upon Defendant Stanwix and the MCM CMV colliding with the Tinkel Vehicle, minor K.R.T. was conscious and acutely aware of his surroundings including his critical injuries, pain, suffering, and mental anguish.

31. Minor K.R.T. was life -flighted to Children’s Mercy Hospital in Kansas City with critical injuries.

32. Minor K.R.T. eventually succumbed to his critical injuries and died on August 13, 2022.

33. Upon Defendant Stanwix and the MCM CMV colliding with the Tinkel Vehicle, minor K.H.T. was in and out of consciousness and seriously injured.

34. Upon Defendant Stanwix and the MCM CMV colliding with the Tinkel Vehicle, Jillian Tinkel was seriously injured.

35. Upon Defendant Stanwix colliding with the Tinkel Vehicle and Schindler Vehicle, Megan Schindler was seriously injured.

**FACTS COMMON TO ALL COUNTS
THE NEGLIGENCE AND NEGLIGENCE PER SE OF
DEFENDANT STANWIX AND DEFENDANT MIDWEST CONCRETE MATERIALS, INC.**

36. Plaintiffs hereby incorporate by reference all of the preceding allegations of the Petition as if fully set forth herein.

37. At all times material herein, Defendant Stanwix was an agent and/or employee of Defendant MCM under 49 C.F.R. § 390.5.

38. At all material times, Defendant Stanwix was an employee, servant, and/or agent of Defendant MCM, and Defendant MCM had the right to exercise control over Defendant Stanwix.

39. At all material times, Defendant Stanwix was operating the MCM CMV within the course and scope of his employment or agency for Defendant MCM.

40. At all material times, Defendant Stanwix operated the MCM CMV with the knowledge, consent, and permission of Defendant MCM.

41. At all material times, the MCM CMV was operated by Defendant Stanwix under the control and motor carrier authority of Defendant MCM.

42. At all material times, Defendant MCM owned, controlled, and/or had the right to control the use and operation of the MCM CMV.

43. At all material times, Defendant MCM was a “common carrier,” “motor carrier” and an “employer” of drivers of “commercial vehicles” as those terms are used and defined in the Kansas Statutes and the Federal Motor Carrier Safety Regulations and is subject to such statutes, rules, and regulations, which are codified within 49 C.F.R. Parts 90, *et seq.*

44. At all material times, the MCM CMV was a “commercial motor vehicle” under 49 C.F.R. § 390.5.

45. At all material times, Defendant Stanwix operated the MCM CMV in furtherance of Defendant MCM's business and/or interests and was engaged in accomplishing a task for Defendant MCM.

46. At all material times, Defendant MCM had the authority, right, and/or duty to control how Defendant Stanwix performed his job.

47. The Federal Regulations referenced herein have been adopted, were and are enforced by the State of Kansas.

48. At all material times, Defendants had a duty to adhere to applicable laws and regulations promulgated by the United States Department of Transportation, Federal Motor Carrier Safety Administration, and the State of Kansas.

49. On August 10, 2022, while utilizing the public roadways of US Highway 24, Defendant Stanwix owed a duty to all Plaintiffs, and others on the road, to exercise reasonable care in the operation and driving of the MCM CMV so as to not cause injury or damage to Plaintiffs.

50. Further, on August 10, 2022, while utilizing the public roadways of US Highway 24, Defendant Stanwix owed a duty to all Plaintiffs, and others on the road, to obey the rules of the road of the state of Kansas.

51. At all material times, Defendant Stanwix failed to exercise reasonable care in the operation of the MCM CMV and was negligent in the following respects:

- i. Failing to keep a proper lookout;
- ii. Inattentive and or distracted driving for the traffic conditions present;
- iii. Failing to slow and brake for stopped and/or slowing traffic in front of the MCM CMV;
- iv. Failing to yield to stopped and/or slowing traffic in front of the MCM CMV;
- v. Operating the MCM CMV while using a smart phone, including but limited to, using the smart phone camera or video while driving, texting while driving,

browsing the internet while driving, or otherwise viewing or using the smart phone while driving;

- vi. Driving too fast for the conditions present;
- vii. Failing to keep the MCM CMV under his control;
- viii. Operating the MCM CMV when he was too impaired, fatigued, ill, and/or medically unfit to operate the MCM CMV safely; and
- ix. Such other acts and omissions of negligence as will be determined through discovery.

52. At all material times, Defendant Stanwix failed to exercise reasonable care, and was negligent *per se* in violating:

- i. K.S.A. 8-1557 for driving too fast for the circumstances present;
- ii. KSA 8-1558 for exceeding the posted speed limit;
- iii. K.S.A. 8-1566 (a) Driving the MCM CMV in willful or wanton disregard for the safety of persons or property and reckless driving.
- iv. K.S.A. 8-15,111 for operation of a wireless communications device and texting while driving;
- v. KSA 8-1567(4) operating a vehicle while under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle;
- vi. KSA 8-1523 (a), stating the driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.
- vii. 49 C.F.R. § 392.2 and KS Admin. Reg. 82-4-3h(a), which state that a commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated;
- viii. 49 C.F.R. § 391.11 and KS Admin. Reg. 82-4-3g(a), which state that a person

- shall not drive a commercial motor vehicle unless he is qualified under the regulations, which, among other things require that he can, by reason of experience or training, safely operate the type of commercial motor vehicle he drives, and that he is physically qualified to drive a commercial motor vehicle;
- ix. 49 C.F.R. § 392.3 and KS Admin. Reg. 82-4-3h(a), which state that no driver shall operate a commercial motor vehicle while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle; and
 - x. 49 C.F.R. § 392.80, 392.82 and KS Admin. Reg. 82-4-3h(a), which prohibit texting while driving and the use of a hand-held mobile telephone while driving.
 - xi. 49 C.F.R. § 395.1 and KS Admin. Reg. 82-4-3a, which prohibit operation of a commercial motor vehicle outside and exceeding hours of service.

53. Each of the above acts and/or omissions, individually and cumulatively, constitute negligence and negligence *per se* and caused or contributed to cause the resulting injuries and damages of all Plaintiffs.

54. The laws and regulations mentioned above were designed and intended to protect a class of people that included all Plaintiffs.

55. The laws and regulations mentioned above were designed and intended to prevent the injuries suffered by all Plaintiffs.

56. As a direct and proximate result of Defendant Stanwix and Defendant MCM's violation of the laws and regulations mentioned above, the Collision occurred and Plaintiffs all suffered damages as further set forth below in their respective causes of action as a result.

57. Defendant MCM is vicariously liable for the negligent and negligent *per se* conduct and acts and omissions of Defendant Stanwix pursuant the principles of agency and *respondeat superior* under Kansas law.

58. Independent of its vicarious liability, Defendant MCM owed a duty of reasonable care to all Plaintiffs in the qualification, hiring, training, supervision, monitoring, and retention of its agents, servants, and employees, including Defendant Stanwix.

59. Defendant MCM owed a duty of reasonable care to all Plaintiffs in the entrustment of its vehicles and equipment to its agents, servants, and employees, including Defendant Stanwix.

60. Defendant MCM owed a duty of reasonable care to all Plaintiffs in the manner that it permitted individuals to operate under MCM's motor carrier authority, and in the management and operation of its business.

61. Defendant MCM was negligent in at least the following respects:

- i. In permitting Defendant Stanwix to operate a commercial motor vehicle when he was not qualified to do so, and where Defendant MCM knew or should have known that Defendant Stanwix was not qualified to do so;
- ii. In entrusting the MCM CMV to Defendant Stanwix when Defendant MCM knew or should have known that Defendant Stanwix was an incompetent, reckless, unqualified, and/or dangerous driver;
- iii. In failing to adequately train, instruct, supervise, and monitor Defendant Stanwix concerning the safe operation of the MCM CMV;
- iv. In failing to adequately train, instruct, supervise, and monitor Defendant Stanwix regarding keeping a proper lookout, speeding, inattentive driving, operation of the MCM vehicle with a wireless communications device; staying aware of the driving environment, and avoiding distractions; and
- v. In hiring Defendant Stanwix even though Defendant MCM knew or should have known that Defendant Stanwix had inadequate experience, training, knowledge, medical qualification, judgment, and/or skill to safely operate and maintain a CMV.

62. At all material times, Defendant MCM was negligent *per se* in violating:

- i. 49 C.F.R. § 390.11 and KS Admin. Reg. 82-4-3f, which state that it is the duty of the motor carrier to require observance of the duties and prohibitions prescribed for drivers of commercial motor vehicles;
- ii. 49 C.F.R. § 393.111 and KS Admin. Reg. 82-4-3i(a), which state that all commercial motor vehicle operators have knowledge of the following areas: procedures for safe vehicle operations; the effects of fatigue, poor vision and general health upon safe commercial motor vehicle operation; proper procedures needed to use a commercial motor vehicle's safety systems in an emergency situation; proper procedures for signaling presence; speed management and variables such as speed, visibility, surface conditions, traffic flow, and stopping distance; hazard perception; emergency maneuvers such as evasive steering, emergency stopping, brake failure, what to do when sleepy while driving; and safely operating combination vehicles;
- iii. 49 C.F.R. § 391.11 and KS Admin. Reg. 82-4-3g(a), which state that a person shall not drive a commercial motor vehicle unless he is qualified under the regulations, which, among other things require that he can, by reason of experience or training, safely operate the type of commercial motor vehicle he drives, and that he is physically qualified to drive a commercial motor vehicle;
- iv. 49 C.F.R. § 392.2 and KS Admin. Reg. 82-4-3h(a), which state that a commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated;
- v. 49 C.F.R. § 390.3, KS Admin. Reg. 82-4-2(a), and KS Admin. Reg. 82-4-3f(a), which state that every employer of drivers must be knowledgeable of and comply with all regulations contained in the Federal Motor Carrier Safety Regulations that are applicable to its operations, and which state that every driver and

employee of a motor carrier must be instructed regarding all applicable Federal Motor Carrier Safety Regulations;

- vi. 49 C.F.R. § 392.3 and KS Admin. Reg. 82-4-3h(a), which state that a motor carrier shall not require or permit a driver to operate a commercial motor vehicle while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him to begin or continue to operate the commercial motor vehicle;
- vii. 49 C.F.R. § 392.80, 392.82 and KS Admin. Reg. 82-4-3h(a), which prohibit texting while driving and the use of a hand-held mobile telephone while driving; and
- viii. 49 C.F.R. § 395.1 and KS Admin. Reg. 82-4-3a, which prohibit operation of a commercial motor vehicle outside and exceeding hours of service.

63. Each of the above acts and/or omissions, individually and cumulatively, constitute negligence and negligence *per se* and caused or contributed to cause the resulting injuries and damages of all Plaintiffs.

64. The laws and regulations mentioned above were designed and intended to protect a class of people that included all Plaintiffs.

65. The laws and regulations mentioned above were designed and intended to prevent the injuries suffered by all Plaintiffs.

66. Defendant MCM's failure to reasonably qualify, hire, train, supervise, monitor, and retain Defendant Stanwix and failure in entrusting its commercial motor vehicle to Defendant Stanwix directly caused or contributed to cause the collision and all Plaintiffs' injuries and damages.

67. Had Defendant MCM used the care and skill exercised by a reasonable company under the same or similar circumstances in reference to items listed above, Defendant Stanwix would not have been hired, would have been reasonably trained, would have been reasonably supervised, reasonably

monitored, would not have been retained, and/or would not have been entrusted with the MCM CMV, and the subject Collision would not have occurred.

68. As a direct and proximate result of Defendant MCM's violation of the laws and regulations mentioned above, the Collision occurred and Plaintiffs all suffered damages as further set forth below in their respective causes of action as a result.

**COUNT I – NEGLIGENCE AND NEGLIGENCE *PER SE*
AGAINST DEFENDANT STANWIX AND
DEFENDANT MIDWEST CONCRETE MATERIALS, INC.
THE PERSONAL INJURIES OF JILLIAN TINKEL**

69. Plaintiffs hereby incorporate by reference all preceding allegations of the Petition as if fully set forth herein.

70. This claim is brought by Jillian Tinkel in her individual capacity for her personal injuries sustained in the Collision.

71. Defendants Stanwix and Defendant MCM each respectively owed duties of reasonable care to Plaintiff Jillian Tinkel in the management and operation of the MCM CMV in conjunction with the business of Defendant MCM which are fully set forth above.

72. Defendants Stanwix and MCM breached these duties by engaging in the acts and omissions cited above which constitute breaches of the duty of reasonable care, and negligence and negligence *per se*.

73. As a direct and proximate result of Defendant Stanwix and Defendant MCM's breach of duties, negligence, and negligence *per se*, Plaintiff Jillian Tinkel sustained injuries in the Collision and was damaged.

74. Such damages include:

- i. Medical expenses in the past and future;
- ii. Economic loss in the past and future, including but not limited to lost wages and/or earning capacity; and

- iii. Pain, suffering, mental anguish, disfigurement, and disability, all in the past and future.

WHEREFORE, Plaintiff Jillian Tinkel, in her individual capacity, respectfully request judgment be entered against Defendant Stanwix and Defendant MCM, jointly and severally, in an amount in excess of \$75,000.00 that is fair and reasonable as determined by a jury, costs, post judgment interest, reasonable attorney's fees to be determined by the Court pursuant K.S.A. § 66-176, and for such further relief the Court finds just and equitable.

**COUNT II – NEGLIGENCE AND NEGLIGENCE *PER SE*
AGAINST DEFENDANT STANWIX AND
DEFENDANT MIDWEST CONCRETE MATERIALS, INC.
THE PERSONAL INJURIES OF MINOR K.H.T.**

75. Plaintiffs hereby incorporate by reference all preceding allegations of the Petition as if fully set forth herein.

76. This claim is brought by Jillian Tinkel in her capacity as natural parent / next friend of her minor child K.H.T. for his personal injuries sustained in the Collision.

77. Defendants Stanwix and Defendant MCM each respectively owed duties of reasonable care to minor K.H.T. in the management and operation of the MCM CMV in conjunction with the business of Defendant MCM which are fully set forth above.

78. Defendants Stanwix and MCM breached these duties by engaging in the acts and omissions cited above which constitute breaches of the duty of reasonable care, and negligence and negligence *per se*.

79. As a direct and proximate result of Defendant Stanwix and Defendant MCM's breach of the duties, negligence, and negligence *per se*, minor K.H.T. sustained injuries in the Collision and was damaged.

80. Such damages include:

- i. Medical expenses in the past and future;

- ii. Economic loss in the past and future, including but not limited to lost wages and/or earning capacity; and
- iii. Pain, suffering, mental anguish, disfigurement, and disability, all in the past and future.

WHEREFORE, Plaintiff Jillian Tinkel, in her capacity as natural parent / guardian / next friend of her minor child K.H.T., respectfully request judgment be entered against Defendant Stanwix and Defendant MCM, jointly and severally, in amount in excess of \$75,000.00 that is fair and reasonable as determined by a jury, costs, post judgment interest, reasonable attorney's fees to be determined by the Court pursuant K.S.A. § 66-176, and for such further relief the Court finds just and equitable.

**COUNT III – NEGLIGENCE AND NEGLIGENCE *PER SE*
AGAINST DEFENDANT STANWIX AND
DEFENDANT MIDWEST CONCRETE MATERIALS, INC.
THE PERSONAL INJURIES OF MEGAN SCHINDLER AND LOSS OF CONSORTIUM**

81. Plaintiffs hereby incorporate by reference all preceding allegations of the Petition as if fully set forth herein.

82. This claim is brought by Megan Schindler in her individual capacity for her personal injuries sustained in the Collision, and on behalf of her spouse for loss or impairment of her ability to perform services in the household and in the discharge of his or her domestic duties pursuant K.S.A. § 23-2605.

83. Defendants Stanwix and Defendant MCM each respectively owed duties of reasonable care to Plaintiff Megan Schindler in the management and operation of the MCM CMV in conjunction with the business of Defendant MCM which are fully set forth above.

84. Defendants Stanwix and MCM breached these duties by engaging in the acts and omissions cited above which constitute breaches of the duty of reasonable care, and negligence and negligence *per se*.

85. As a direct and proximate result of Defendant Stanwix and Defendant MCM's breach of duties, negligence, and negligence *per se*, Plaintiff Megan Schindler sustained injuries in the Collision and was damaged.

86. Such damages include:

- i. Medical expenses in the past and future;
- ii. Economic loss in the past and future, including but not limited to lost wages and/or earning capacity;
- iii. Pain, suffering, mental anguish, disfigurement, and disability, all in the past and future; and
- iv. Loss or impairment of her ability to perform services in the household and in the discharge of her domestic duties.

WHEREFORE, Plaintiff Megan Schindler, in her individual capacity and on behalf of her spouse pursuant K.S.A. § 23–2605, respectfully request judgment be entered against Defendant Stanwix and Defendant MCM, jointly and severally, in amount in excess of \$75,000.00 that is fair and reasonable as determined by a jury, costs, post judgment interest, reasonable attorney's fees to be determined by the Court pursuant K.S.A. § 66-176, and for such further relief the Court finds just and equitable.

**COUNT IV – NEGLIGENCE AND NEGLIGENCE *PER SE*
AGAINST DEFENDANT STANWIX AND
DEFENDANT MIDWEST CONCRETE MATERIALS, INC.
THE SURVIVORSHIP PERSONAL INJURIES OF MINOR K.R.T.**

87. Plaintiffs hereby incorporate by reference all preceding allegations of the Petition as if fully set forth herein.

88. This claim is brought by Jillian Tinkel in her capacity as the personal representative of the Estate of minor decedent K.R.T. for his survivorship personal injuries sustained in the Collision.

89. Defendants Stanwix and Defendant MCM each respectively owed duties of reasonable care to minor decedent K.R.T. in the management and operation of the MCM CMV in conjunction with the business of Defendant MCM, which are fully set forth above.

90. Defendants Stanwix and MCM breached these duties by engaging in the acts and omissions cited above which constitute breaches of the duty of reasonable care, and negligence and negligence *per se*.

91. As a direct and proximate result of Defendant Stanwix and Defendant MCM's breach of duties, negligence, and negligence *per se*, minor K.R.T. sustained injuries in the Collision and was damaged.

92. Such damages include:

- i. Medical expenses in the past;
- ii. Pain, suffering, mental anguish, disfigurement, and disability, all in the past.

WHEREFORE, Plaintiff Jillian Tinkel, in her capacity as the personal representative of the Estate of Minor decedent K.R.T., respectfully request judgment be entered against Defendant Stanwix and Defendant MCM, jointly and severally, in amount in excess of \$75,000.00 that is fair and reasonable as determined by a jury, costs, post judgment interest, reasonable attorney's fees to be determined by the Court pursuant K.S.A. § 66-176, and for such further relief the Court finds just and equitable.

**COUNT V – THE WRONGFUL DEATH OF RANDY TINKEL
AGAINST DEFENDANT STANWIX AND
DEFENDANT MIDWEST CONCRETE MATERIALS, INC.**

93. Plaintiffs hereby incorporate by reference all preceding allegations of the Petition as if fully set forth herein.

94. This cause of action is brought for wrongful death of Randy Tinkel against Defendant Stanwix and Defendant MCM under Kansas law pursuant K.S.A. § 60-1901, *et seq.*

95. This cause of action for wrongful death of Randy Tinkel is brought by Jillian Tinkel, heir at law of Randy Tinkel, on behalf of all heirs at law pursuant K.S.A. § 60-1902 and Kansas common law.

96. The heirs at law pursuant K.S.A. § 60-1902 and Kansas common law encompass the following people: Jillian Tinkel and her minor son K.H.T.

97. The wrongful actions and omissions of Defendant Stanwix and Defendant MCM, their negligent acts and acts constituting negligence *per se* as previously described in this lawsuit, caused or contributed to cause the death of Randy Tinkel.

98. As a direct and proximate result of the wrongful actions and omissions of Defendant Stanwix and Defendant MCM, their negligent acts and acts constituting negligence *per se* as previously described in this lawsuit, caused or contributed to cause damage to the heirs at law of Randy Tinkel.

99. Such damages include the following economic damages as set forth in K.S.A. § 60-1904 and as set forth in *Wentling v. Medical Anesthesia Services*, 237 Kan. 503 (1985), and *Burnette v. Eubanks*, 308 Kan. 838 (2018), all in excess of \$75,000.00:

- i. Loss of parental care, training, guidance, education, and/or protection, and loss of services for the same;
- ii. Loss of marital care, attention, advice, counsel, and/or protection, and loss of services for the same;
- iii. Loss of earnings the decedent would have provided in his lifetime;
- iv. Medical and other expenses for the care of the decedent caused by the injury; and
- v. Reasonable funeral expenses.

WHEREFORE, Plaintiffs respectfully request judgment be entered against Defendant Stanwix and Defendant MCM, jointly and severally, in amount in excess of \$75,000.00 that is fair and reasonable as determined by a jury, costs, post judgment interest, reasonable attorney's fees to be determined by the Court pursuant K.S.A. § 66-176, and for such further relief the Court finds just and equitable.

**COUNT VI – THE WRONGFUL DEATH OF MINOR K.R.T.
AGAINST DEFENDANT STANWIX AND
DEFENDANT MIDWEST CONCRETE MATERIALS, INC.**

100. Plaintiffs hereby incorporate by reference all preceding allegations of the Petition as if fully set forth herein.

101. This cause of action is brought for wrongful death of minor K.R.T. against Defendant Stanwix and Defendant MCM under Kansas law pursuant K.S.A. § 60-1901 *et seq.*

102. This cause of action for wrongful death of minor K.R.T. is brought by Jillian Tinkel, the only heir at law of minor decedent K.R.T pursuant K.S.A. § 60-1902 and Kansas common law.

103. The wrongful actions and omissions of Defendant Stanwix and Defendant MCM, their negligent acts and acts constituting negligence *per se* as previously described in this lawsuit, caused or contributed to cause the death of minor decedent K.R.T.

104. As a direct and proximate result of the wrongful actions and omissions of Defendant Stanwix and Defendant MCM, their negligent acts and acts constituting negligence *per se* as previously described in this lawsuit, caused or contributed to cause damages to the heir at law of minor decedent K.R.T.

105. Such damages include the following economic damages as set forth in K.S.A. § 60-1904 and as set forth in *Wentling v. Medical Anesthesia Services*, 237 Kan. 503 (1985) and *Burnette v. Eubanks*, 308 Kan. 838 (2018), all in excess of \$75,000.00:

- i. Loss of filial care, attention, and/or protection, and loss of services for the same;
- ii. Loss of earnings the child would have contributed to his parents during the remainder of the child's lifetime;
- iii. Medical and other expenses for the care of the deceased caused by the injury; and
- iv. Reasonable funeral expenses.

WHEREFORE, Plaintiffs respectfully request judgment be entered against Defendant Stanwix and Defendant MCM, jointly and severally, in amount in excess of \$75,000.00 that is fair and reasonable as determined by a jury, costs, post judgment interest, reasonable attorney's fees to be determined by the Court pursuant K.S.A. § 66-176, and for such further relief the Court finds just and equitable.

COUNT VI – ACTUAL DAMAGES AND ATTORNEYS FEES PURSUANT K.S.A. 66-176

106. Plaintiffs hereby incorporate by reference all preceding allegations of the Petition as if fully set forth herein.

107. Pursuant to K.S.A. § 66-176, any common carrier which violates any of the provisions of law for the regulation of common carriers shall forfeit, for every offense, to the person, company or

corporation aggrieved thereby, the actual damages sustained by the party aggrieved, together with the costs of suit and reasonable attorney fees, to be fixed by the court.

108. Provisions of law for the regulation of common carriers include:

- i. That every driver of a public or private motor carrier be competent to operate the motor vehicle under such driver's charge;
- ii. The provisions of 49 C.F.R. parts 390-399, adopted by the rules and regulations of the commission; and
- iii. The regulations pertaining to motor carriers as amended and promulgated by the state corporation commission, found in the Kansas Administrative Regulations 82-4-1, *et seq.*

109. As identified above, Defendant Stanwix and Defendant MCM violated numerous provisions of law for the regulation of common carriers which directly caused and/or contributed to cause the Collision, and the injuries and damages to all Plaintiffs in all Counts brought in this lawsuit.

110. All Plaintiffs were aggrieved and sustained actual damages due to Defendant Stanwix and Defendant MCM's violation of numerous provisions of law for the regulation of common carriers.

111. All Plaintiffs are entitled to recover their actual damages, costs of suit, and reasonable attorney's fees, based on Defendant Stanwix and Defendant MCM's violation of numerous provisions of law for the regulation of common carriers.

WHEREFORE, Plaintiffs respectfully request judgment be entered against Defendant Stanwix and Defendant MCM, jointly and severally, in amount in excess of \$75,000.00 that is fair and reasonable as determined by a jury, costs, post judgment interest, reasonable attorney's fees to be determined by the Court pursuant K.S.A. § 66-176, and for such further relief the Court finds just and equitable.

JURY TRIAL DEMAND

112. Plaintiffs hereby incorporate by reference all preceding allegations of the Petition as if fully set forth herein.

113. Plaintiffs Jillian Tinkel, in her personal capacity; as heir at law of Randy Tinkel; as heir at law of K.R.T.; as Personal Representative of the Estate of K.R.T.; as natural parent / next friend of K.H.T. hereby demands a jury trial on all issues, claims, and causes of action brought in this lawsuit.

114. Megan Schindler hereby demands a jury trial on all issues, claims, and causes of action brought in this lawsuit.

WHEREFORE, Plaintiffs respectfully request judgment be entered against Defendant Stanwix and Defendant MCM, jointly and severally, in amount in excess of \$75,000.00 that is fair and reasonable as determined by a jury, costs, post judgment interest, reasonable attorney's fees to be determined by the Court pursuant K.S.A. § 66-176, and for such further relief the Court finds just and equitable.

Respectfully submitted,

DICKERSON OXTON, LLC

/s/ Thomas J. Dickerson

Thomas J. Dickerson KS# 24647

Chelsea Oxtan Dickerson KS# 24648

Kahlie M. Hoffman KS# 26805

1200 Main Street, Suite 2120

Kansas City, Missouri 64105

Phone: (816) 268-1960

Fax: (816) 268-1965

tdickerson@dickersonoxton.com

cdickerson@dickersonoxton.com

ATTORNEYS FOR PLAINTIFFS JILLIAN TINKEL IN
ALL CAPACITIES AND THE ESTATE OF K.R.T.

DOLLAR BURNS BECKER HERSHEWE, L.C.

/s/ Josh Becker

Joshua D. Becker KS# 27214

1100 Main Street, Suite 2600

Kansas City, Missouri 64105

Phone: (816) 876-2600

Fax: (816) 221-8763

joshb@dollar-law.com

ATTORNEY FOR PLAINTIFF MEGAN SCHINDLER

ELECTRONICALLY FILED

2022 Oct 18 AM 11:47

CLERK OF THE DOUGLAS COUNTY DISTRICT COURT
CASE NUMBER: 2022-CV-000354

Jillian Tinkel et. al.

vs.

Mark Stanwix et. al.

SUMMONS

Chapter 60 - Service by Attorney or Process Server

To the above-named Defendant/Respondent:

Mark Stanwix, Sr.
619 Whitfield St., Lot C
Lecom, KS 66050

You are hereby notified that an action has been commenced against you in this court. You are required to file your answer or motion under K.S.A. 60-212, and amendments thereto, to the petition with the court and to serve a copy upon:

Thomas J. Dickerson
1200 Main Street
Suite 2120
Kansas City, MO 64105

within 30 days after service of summons on you.



Clerk of the District Court

Electronically signed on 10/18/2022 02:56:10 PM

Documents to be served with the Summons:

PLE: Petition Petition for Damages for Personal Injury and Wrongful Death

JILLIAN TINKEL, in her personal capacity, heir at law of Randy Tinkel, heir at law of minor K.R.T., and as natural parent/guardian/next friend of K.H.T., and as Administrator of the Estate of K.R.T.;

And

K.H.T. a minor, through his natural parent/guardian/next friend JILLIAN TINKEL;

And

THE ESTATE OF K.R.T., through its Personal Representative JILLIAN TINKEL;

And

MEGAN SCHINDLER

Plaintiffs,

v.

MARK STANWIX, SR.

And

MIDWEST CONCRETE MATERIALS, INC.

Defendants.

Cause No. 2022-CV-000354
K.S.A. Chapter 60
Div. 4

- Plaintiff's Opening Interrogatories to Defendant Midwest Concrete Materials, Inc.;

- Plaintiff's First Request for Production of Documents to Defendant Midwest Concrete Materials, Inc.;
- Plaintiff's Opening Interrogatories to Defendant Mark Stanwix, Sr.;
- Plaintiff's First Requests for Production of Documents to Defendant Mark Stanwix, Sr.;
and
- Certificate of Service

Respectfully submitted,

/s/ Josh Becker
Josh Becker KS Bar #27214
DOLLAR, BURNS & BECKER, LC
1100 Main Street, Suite 2600
Kansas City, MO 64105
(816) 876-2600
(816) 221-8763 Fax
joshb@dollar-law.com

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of October 2022, the foregoing documents were sent via electronic mail to all attorneys of record.

/s/ Josh Becker
Attorney for Plaintiff

**IN THE 7TH JUDICIAL DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
CIVIL COURT DEPARTMENT**

JILLIAN TINKEL et al,)	
)	
Plaintiff,)	
v.)	
	)	Cause No. 2022-CV-000354
MIDWEST CONCRETE MATERIALS,)	
INC. et al,	)	K.S.A. Chapter 60
)	
Defendants.)	

**MOTION FOR APPOINTMENT OF NEXT FRIEND JILLIAN TINKEL
FOR MINOR PLAINTIFF K.H.T.**

COMES NOW Jillian Tinkel and in support of her Application for Appointment and Consent to Serve as Next Friend, states as follows:

1. Minor K.H.T. is a minor child, age 2 years (hereinafter, “Minor Plaintiff”).
2. Jillian Tinkel (hereinafter “Applicant”) is the natural mother of Minor Plaintiff, and the natural father of Minor Plaintiff Randy Tinkel is deceased.
3. Minor Plaintiff resides exclusively with Applicant.
4. Minor Plaintiff has no legally appointed Next Friend.
5. Minor Plaintiff’s suffered personal injuries in a motor vehicle collision on August 10, 2022, and it is necessary for him to prosecute this action through a Next Friend pursuant K.S.A. § 60-217(c)(2).
6. Applicant consents to her appointment as Next Friend for the purposes of prosecuting the claims made by Minor Plaintiff for personal injuries sustained as a result of the motor vehicle collision on August 10, 2022.

WHEREFORE, Jillian Tinkel prays that she be appointed Next Friend for purposes of prosecuting Minor Plaintiff K.H.T.’s personal injury claims pursuant K.S.A. § 60-217(c)(2) and for such further relief the Court finds just and equitable.

Respectfully submitted,

DICKERSON OXTON, LLC

/s/ Thomas J. Dickerson

Thomas J. Dickerson KS# 24647

Chelsea Oxtan Dickerson KS# 24648

Kahlie M. Hoffman KS# 26805

1200 Main Street, Suite 2120

Kansas City, Missouri 64105

Phone: (816) 268-1960

Fax: (816) 268-1965

tdickerson@dickersonoxton.com

cdickerson@dickersonoxton.com

khoffman@dickersonoxton.com

*ATTORNEYS FOR PLAINTIFF JILLIAN TINKEL IN
ALL CAPACITIES*

CERTIFICATE OF SERVICE

The undersigned certifies that a true and complete copy of the foregoing was served on the parties below via electronic mail on October 19, 2022, as follows:

Josh Becker
Dollar Burns Becker Hershewe
1100 Main St #2600
Kansas City, MO 64105
joshb@dollar-law.com
Attorney for Plaintiff Megan Schindler

John Hansen
McCoy Leavitt Laskey
8700 Monrovia Street
Lenexa, KS 66215
jhansen@mlllaw.com
*Attorney for Defendant Midwest
Concrete Materials, Inc.*

Sean P. Edwards
Sanders Warren & Russell LLP
11225 College Boulevard, Suite 450
Overland Park, KS 66210
s.edwards@swrllp.com
Attorney for Defendant Mark Stanwix, Sr.

/s/ Thomas J. Dickerson

Thomas J. Dickerson

IN THE 7TH JUDICIAL DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
CIVIL COURT DEPARTMENT

JILLIAN TINKEL et al.,)	
)	
Plaintiff,)	
v.)	
	)	Cause No. 2022-CV-000354
MIDWEST CONCRETE MATERIALS,)	
INC. et al.,	)	K.S.A. Chapter 60
)	
Defendants.)	

CERTIFICATE OF SERVICE OF DISCOVERY REQUESTS

Plaintiff hereby certifies that *Plaintiff's First Interrogatories to Defendant Midwest Concrete Materials, Inc., Plaintiff's First Request for Production of Documents to Defendant Midwest Concrete Materials, Inc., Plaintiff's First Interrogatories to Defendant Mark Stanwix, Sr. and Plaintiff's First Requests for Production to Defendant Mark Stanwix, Sr* were served upon the following Defendants by sending such discovery requests with the Summons and Petition to the following on October 18, 2022:

John Hansen
McCoy Leavitt Laskey
8700 Monrovia Street
Lenexa, KS 66215
jhansen@mlllaw.com
*Attorney for Defendant Midwest
Concrete Materials, Inc.*

Sean P. Edwards
Sanders Warren & Russell LLP
11225 College Boulevard, Suite 450
Overland Park, KS 66210
s.edwards@swrllp.com
Attorney for Defendant Mark Stanwix, Sr.

Respectfully submitted,

DICKERSON OXTON, LLC

/s/ Thomas J. Dickerson

Thomas J. Dickerson KS# 24647

Chelsea Oxtan Dickerson KS# 24648

Kahlie M. Hoffman KS# 26805

1200 Main Street, Suite 2120

Kansas City, Missouri 64105

Phone: (816) 268-1960

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cdickerson@dickersonoxton.com

khoffman@dickersonoxton.com

*ATTORNEYS FOR PLAINTIFF JILLIAN TINKEL IN
ALL CAPACITIES*

CERTIFICATE OF SERVICE

The undersigned certifies that a true and complete copy of the foregoing was served via electronic mail on October 19, 2022, as follows:

Josh Becker
Dollar Burns Becker Hershewe
1100 Main St #2600
Kansas City, MO 64105
joshb@dollar-law.com
Attorney for Plaintiff Megan Schindler

John Hansen
McCoy Leavitt Laskey
8700 Monrovia Street
Lenexa, KS 66215
jhansen@mlllaw.com
*Attorney for Defendant Midwest
Concrete Materials, Inc.*

Sean P. Edwards
Sanders Warren & Russell LLP
11225 College Boulevard, Suite 450
Overland Park, KS 66210
s.edwards@swrllp.com
Attorney for Defendant Mark Stanwix, Sr.

/s/ Thomas J. Dickerson
Thomas J. Dickerson

**IN THE 7TH JUDICIAL DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
CIVIL COURT DEPARTMENT**

JILLIAN TINKEL et al.,)	
)	
Plaintiff,)	
v.	)	Cause No. 2022-CV-000354
)	
MIDWEST CONCRETE MATERIALS,	)	K.S.A. Chapter 60
INC. et al.,)	
)	
Defendants.)	

ENTRY OF APPEARANCE

Kahlie M. Hoffman of Dickerson Oxtan, LLC, hereby enters her appearance as counsel on behalf of Plaintiff Jillian Tinkel, in all capacities, in the above-referenced case.

Respectfully submitted,

DICKERSON OXTON, LLC

/s/ Kahlie M. Hoffman

Kahlie M. Hoffman	KS# 26805
-------------------	-----------

Thomas J. Dickerson	KS# 24647
---------------------	-----------

Chelsea Oxtan Dickerson	KS# 24648
-------------------------	-----------

1200 Main Street, Suite 2120

Kansas City, Missouri 64105

Phone: (816) 268-1960

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tdickerson@dickersonoxton.com

cdickerson@dickersonoxton.com

*ATTORNEYS FOR PLAINTIFF JILLIAN TINKEL IN
ALL CAPACITIES*

CERTIFICATE OF SERVICE

The undersigned certifies that a true and complete copy of the foregoing was served via electronic mail this 20th day of October, 2022, as follows:

Josh Becker
DOLLAR BURNS BECKER HERSHEWE
1100 Main St #2600
Kansas City, MO 64105
joshb@dollar-law.com
Attorney for Plaintiff Megan Schindler

John Hansen
MCCOY LEAVITT LASKEY
8700 Monrovia Street
Lenexa, KS 66215
jhansen@mlllaw.com
*Attorney for Defendant Midwest
Concrete Materials, Inc.*

Sean P. Edwards
SANDERS WARREN & RUSSELL LLP
11225 College Boulevard, Suite 450
Overland Park, KS 66210
s.edwards@swrllp.com
Attorney for Defendant Mark Stanwix, Sr.

/s/ Kahlie M. Hoffman
Kahlie M. Hoffman

IN THE 7TH JUDICIAL DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
CIVIL COURT DEPARTMENT

JILLIAN TINKEL et al.,)	
)	
Plaintiff,)	
v.)	
	)	Cause No. 2022-CV-000354
MIDWEST CONCRETE MATERIALS,)	
INC. et al.,	)	K.S.A. Chapter 60
)	
Defendants.)	

ENTRY OF APPEARANCE

Chelsea Oxtan Dickerson of Dickerson Oxtan, LLC, hereby enters her appearance as counsel on behalf of Plaintiff Jillian Tinkel, in all capacities, in the above-referenced case.

Respectfully submitted,

DICKERSON OXTON, LLC

/s/ Chelsea Oxtan Dickerson

Chelsea Oxtan Dickerson KS# 24648

Thomas J. Dickerson KS# 24647

Kahlie M. Hoffman KS# 26805

1200 Main Street, Suite 2120

Kansas City, Missouri 64105

Phone: (816) 268-1960

Fax: (816) 268-1965

cdickerson@dickersonoxton.com

tdickerson@dickersonoxton.com

khoffman@dickersonoxton.com

ATTORNEYS FOR PLAINTIFF JILLIAN TINKEL IN
ALL CAPACITIES

CERTIFICATE OF SERVICE

The undersigned certifies that a true and complete copy of the foregoing was served via electronic mail this 20th day of October, 2022, as follows:

Josh Becker
DOLLAR BURNS BECKER HERSHEWE
1100 Main St #2600
Kansas City, MO 64105
joshb@dollar-law.com
Attorney for Plaintiff Megan Schindler

John Hansen
MCCOY LEAVITT LASKEY
8700 Monrovia Street
Lenexa, KS 66215
jhansen@mlllaw.com
*Attorney for Defendant Midwest
Concrete Materials, Inc.*

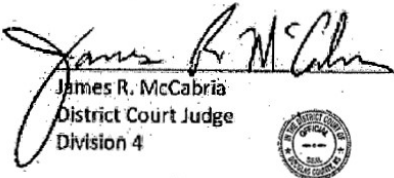
Sean P. Edwards
SANDERS WARREN & RUSSELL LLP
11225 College Boulevard, Suite 450
Overland Park, KS 66210
s.edwards@swrllp.com
Attorney for Defendant Mark Stanwix, Sr.

/s/ Chelsea Oxtan Dickerson
Chelsea Oxtan Dickerson



Court: Douglas County District Court
Case Number: 2022-CV-000354
Case Title: Jillian Tinkel, et al. vs. Mark Stanwix Sr., et al.
Type: Journal Entry Appointing Next Friend

SO ORDERED.


James R. McCabria
District Court Judge
Division 4



/s/ Honorable James R. McCabria

**IN THE 7TH JUDICIAL DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
CIVIL COURT DEPARTMENT**

JILLIAN TINKEL et al,)	
)	
Plaintiff,)	
v.)	
	)	Cause No. 2022-CV-000354
MIDWEST CONCRETE MATERIALS,)	
INC. et al,	)	K.S.A. Chapter 60
)	
Defendants.)	

JOURNAL ENTRY APPOINTING NEXT FRIEND

On the Application for Appointment of Next Friend of Minor K.H.T., and the Court being fully advised in the premises, it is hereby ORDERED, ADJUDGED AND DECREED that Jillian Tinkel be appointed Next Friend of K.H.T. for the purposes of prosecuting said Minor's claims for personal injuries from the automobile collision.

Date: _____

JUDGE OF THE DISTRICT COURT

Respectfully submitted and prepared by:

DICKERSON OXTON, LLC

/s/ Thomas J. Dickerson

Thomas J. Dickerson KS# 24647

Chelsea Oxtan Dickerson KS# 24648

Kahlie M. Hoffman KS#26805

1200 Main St., Ste. 2120

Kansas City, MO 64105

Phone: (816) 268-1960

Fax: (816) 268-1965

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cdickerson@dickersonoxton.com

khoffman@dickersonoxton.com

ATTORNEYS FOR PLAINTIFF