

06-1487-CD

Kathryn Clever et al vs Yourga Trucking al

2006-1487-CD

Kathryn Clever et al vs Yourga Trucking et

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
CIVIL DIVISION**

Kathryn Clever, Individually and as the
Administratrix of the Estate of
Richard Clever, Plaintiff,

VS.

Yougha Trucking, Inc., B and D Leasing Inc.,
and Gerald E. Murray, Defendants

() () () () () () () () ()

Case No. 2006-1487-CD

COMPLAINT IN A CIVIL ACTION

FILED ON BEHALF OF PLAINTIFF

COUNSEL FOR PLAINTIFF:

JAMES D. BELLIVEAU
PA ID # 22977
2100 LAW&FINANCE BUILDING
429 FOURTH AVENUE
PITTSBURGH PA 15219
412-281-8781

FILED

SEP 13 2006

10/11:45/00
William A. Shaw

Prothonotary/Clerk of Courts
1 cent to Affy

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

David S. Meholic, Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield PA 16830
814-765-2641 ext 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
CIVIL DIVISION

Kathryn Clever, Individually and as the (
Administratrix of the Estate of (
Richard Clever, Plaintiff, (
 (
 (Case No. (
vs. (
 (
 (
 (
Yourga Trucking, Inc., B and D Leasing Inc., (
and Gerald E. Murray, Defendants (

COMPLAINT IN A CIVIL ACTION

AND NOW COMES Kathryn Clever, Individually and as the Administratrix of the Estate of Richard Clever, by her attorney, James D. Belliveau to file this Complaint to set forth in support thereof the following:

1. Plaintiff Kathryn Clever is an adult individual who lives at RD 2 Box 137 Kittanning, Armstrong County, Pennsylvania 16201. She is the widow of Richard Clever.
2. On August 11, 2006, Plaintiff Kathryn Clever was appointed Administratrix of the Estate of Richard Clever by the Register of Wills in Armstrong County at Number 0306-00323.
3. Defendant Yourga Trucking Inc. is a Pennsylvania corporation with a place of business located at 100 Yourga Place, Mercer County, Pennsylvania 16161
4. Defendant D & B Leasing Inc, is a Pennsylvania corporation with a place of business located at 100 Yourga Place, Wheatland, Mercer County, Pennsylvania 16161.
5. Defendant Gerald E. Murray is an adult individual whose last known address is 885 Doris Lane, Hubbard, Ohio 44425.
6. The events hereinafter complained of occurred on August 3, 2006 at or about 2:45 PM along Interstate 80 within the confines of Sandy Township, Clearfield County, Pennsylvania.
7. At said time and place, Richard Clever, deceased, was lawfully and carefully operating his motor vehicle on the highway when he brought it to a controlled stop due to construction and/or an accident in front of him. As he was stopped on the highway, a tractor trailer rig owned by Defendants Yourga Trucking Inc. and D & B Leasing Inc. and operated by Defendant Gerald E. Murray crashed into Mr. Clever's vehicle, causing his death.

8. At all times relevant hereto, Defendant Gerald E. Murray was acting within the course and scope of his employment with Defendants Yourga Trucking Inc. and D & B Leasing Inc..
9. The above described accident occurs as a direct and proximate result of the negligence of Gerald E. Murray in the following particulars:
 - a. In operating a tractor trailer rig at an excessive rate of speed, considering the circumstances existing at the time and place of the accident;
 - b. In failing to keep a lookout ahead for traffic;
 - c. In failing to observe the vehicle occupied by Richard Clever;
 - d. In causing or allowing his tractor trailer rig to collide with the vehicle occupied by Richard Clever;
 - e. In failing to stop, slow, or turn his tractor trailer rig aside when Defendant Gerald E. Murray knew or should have known in the exercise of reasonable care that if he permitted the vehicle to proceed forward, it would collide with the vehicle occupied by Richard Clever; and
 - f. In violating the laws and statutes of the Commonwealth of Pennsylvania specifically 75 Pa. C. S. A 3714, careless driving.
10. In addition to their vicarious liability as the employers of Gerald E. Murray, Defendants Yourga Trucking, Inc. and D & B Leasing Inc. are independently liable for their negligence in the following particulars:
 - a. In failing to hire competent operators of tractor trailer rigs including Defendant Gerald E. Murray;
 - b. In failing to properly train operators of tractor trailers in the safe operation of tractor trailers on the highways;
 - c. In failing to properly supervise Gerald E. Murray to ensure that he operated the tractor trailer rig in a safe and prudent manner.
11. As a direct and approximate result and negligence of the Defendants, jointly and separately, Plaintiff Kathryn Clever makes claim for the following damages under the Wrongful Death Act:
 - a. She has lost the comfort, society, and services of her husband, Richard Clever;
 - b. She has been deprived of the income that she reasonably could have expected to receive from him during his life time;
 - c. She has been deprived of the companionship of her husband Richard Clever;
 - d. She has incurred expenses for Administration of the Estate and the Funeral.

12. Plaintiff Kathryn Clever is the sole person entitled to make a claim under the Wrongful Death Act and is entitled to 100% of the recovery under said Act.

WHEREFORE, Plaintiff Kathryn Clever, individually, and as the Administratrix of the Estate of Richard Cleaver demands judgment against the Defendants in an amount in excess of the statutory arbitration limits.

By: J. N. Belliveau
James D. Belliveau
Attorney for Plaintiff Kathryn Clever

A JURY TRIAL IS DEMANDED

VERIFICATION

I verify that the averments of fact made in the foregoing are true and correct and based upon my personal knowledge, information and belief. I understand that averments of fact in said document are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 8/25/04

Kathryn Clever

Kathryn Clever, individually, and as the Administratrix of the Estate of Richard Clever

Prothonotary/Clerk of Courts
William A. Shaw

SEP 13 2006

FILED

(A)

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
CIVIL DIVISION**

Kathryn Clever, Individually and as the ()
Administratrix of the Estate of ()
Richard Clever, Plaintiff, ()
vs. ()
Case No. 06-1487-CD
Yourga Trucking, Inc., B and D Leasing Inc., ()
and Gerald E. Murray, Defendants ()

PETITION FOR LEAVE OF COURT
TO SETTLE A WRONGFUL
DEATH CASE

FILED ON BEHALF OF PLAINTIFF

COUNSEL FOR PLAINTIFF:

JAMES D. BELLIVEAU
PA ID # 22977
2100 LAW&FINANCE BUILDING
429 FOURTH AVENUE
PITTSBURGH PA 15219
412-281-8781

FILED NO CC
MAY 02 2007
(6K)

William A. Shaw
Prothonotary/Clerk of Courts

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
CIVIL DIVISION

Kathryn Clever, Individually, as the ((((((((
Administratrix of the Estate of ((((((((
Richard Clever ((((((((
Vs ((((((((No. 2006-1487-CD
 ((((((((
Yourga Trucking, Inc., B and D Leasing, Inc., and ((((((((
Gerald E. Murray ((((((((

PETITION FOR LEAVE OF COURT TO SETTLE A WRONGFUL DEATH ACTION

AND NOW comes Kathryn Clever, Individually and as the Administratrix of the Estate of Richard Clever, by her Attorney James D. Belliveau to petition this Honorable Court for leave to settle a wrongful death action and to set forth and support thereof the following:

1. Plaintiff Kathryn Clever is an adult individual that residing at RD 2 Box 137 Kittanning, Armstrong County, Pennsylvania 16201. She is the widow of Richard Clever.
2. On August 11, 2006, Plaintiff Kathryn Clever was appointed Administratrix of the Estate of Richard Clever by the Register of Wills of Armstrong County at 0306-00323.
3. On or about September 13, 2006, Plaintiff Kathryn Clever Individually, and as the Administratrix of the Estate of Richard Clever, commenced this action by filing a

Complaint against Defendants Yourga Trucking Inc, B & D Leasing Inc., and Gerald E. Murray.

4. On August 3, 2006 at about 2:45 pm along Interstate 80 within the confines of Sandy Township, Clearfield County, Plaintiff Richard Clever, deceased, was lawfully and carefully operating his motor vehicle on Interstate 80 when he brought his vehicle to a stop, due to either construction or an accident in front of him. As he was stopped on the highway, a tractor trailer rig owned by Defendants Yourga Trucking Inc., and B & D Leasing Inc. and operated by Gerald E. Murray crashed into the rear of Mr. Clever's vehicle, causing his instantaneous death.
5. At the time of his death, Richard Clever was 75 years of age, having been born on November 9, 1930. He was a retired steel worker.
6. Richard Clever and Petitioner Kathryn Clever were married on December 26, 1981. They resided together continuously from that date until the date of Richard Clever's death. They had no children.
7. Prior to his death, Richard Clever was receiving Social Security benefits and pension payments based on his years of work as a steel worker.
8. There were no medical bills incurred as a result of the accident that occurred August 3, 2006 as Richard Clever died instantaneously at the scene.
9. Funeral expenses in the amount of \$9,525 were incurred for the services and interment of Richard Clever.
10. Following the accident of August 3, 2006, Petitioner Kathryn Clever retained the services of Attorney James D. Belliveau to represent her interests and the interests of the Estate arising from Richard Clever's death.

11. Upon being retained by Petitioner Kathryn Clever, Attorney James D. Belliveau secured the service of an investigator to obtain a copy of the police report, to photograph the scene of the accident, and to photograph the damage to the vehicles in the accident. Thereafter, Attorney Belliveau marshaled economic information, funeral bills and doctors records in order to perform a evaluation of damages. In addition, Attorney Belliveau drafted and filed this pending law suit on behalf of Kathryn Clever and the Estate of Richard Clever. During this period of time Attorney Belliveau also interviewed witnesses, personally secured information about Richard Cleaver's active involvement with the Lions Club. In addition Attorney Belliveau put the insurance carrier for the Defendants on notice of his involvement and this pending law suit.
12. The Defendants in this law suit are insured under a policy of automobile liability insurance issued by State Auto Insurance Companies. At the request of the claims adjuster from State Auto Insurance Companies, Attorney Belliveau made a settlement demand and provided a demand package that included biographical information about Richard Cleaver, Kathryn Cleaver, their relationship, economic information, doctors' records showing his state of health and various other details about the life of Richard Cleaver. Although the demand was made on September 7, 2006, no offer was made until November 15, 2006. There after, an extended period of negotiations went on between the Claims Adjuster for State Auto Insurance Company, a lawyer in Harrisburg retained by State Auto Insurance Company and Plaintiff's counsel. Ultimately, a final offer of \$330,000 was made on March 8, 2007. After review and consultation with her counsel, Petitioner Kathryn Clever has agreed to accept \$330,000 in full satisfaction of her claims against the Defendants arising out of the death of Richard Clever.

13. In light of the instantaneous death, which occurred at the scene of the accident, the life expectancy of 9 ½ years for Richard Cleaver and the economic loss arising as a result of the death of Richard Cleaver, James D. Belliveau, Counsel for Petitioner believes that the settlement is fair and reasonable.
14. Kathryn Cleaver is the sole person entitled to recover under the wrongful death action.
15. Attorney James D. Belliveau was retained on the basis of a contingent fee of 33 1/3% plus out of pocket costs. In the prosecution of this matter, Attorney Belliveau has incurred costs in the amount of \$635.31 for the securing of services of investigator, obtaining medical records, costs for opening the estate and the cost of obtaining the Coroner's report.
16. If approved by this Court the distribution of the settlement proceeds of \$330,000 will be as follows:
 - a. The sum of \$219,364.69 to Kathryn Clever;
 - b. The sum of \$110,000 to Attorney James D. Belliveau for fees for services rendered in this matter.
 - c. The sum of \$635.31 to Attorney James D. Belliveau to reimburse him for his out of pocket costs.
17. Attorney James D. Belliveau will finalize the Administration of the Estate of Richard Clever at no additional charge to Plaintiff Kathryn Cleaver.

WHEREFORE, Petitioner Kathryn Cleaver respectfully prays that this Honorable Court grant her leave to settle this Wrongful Death Action for the sum of \$330,000.00; to authorize her to execute whatever documents are necessary to consummate the settlement, and to distribute the proceeds as set forth above.

J D Belliveau

James D. Belliveau, Attorney for Petitioner

Kathryn Clever

VERIFICATION

I verify that the averments of fact made in the foregoing are true and correct and based upon my personal knowledge, information and belief. I understand that averments of fact in said document are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 4/26/07

Kathryn Clever
Kathryn Clever

FILED

MAY 02 2007

William A. Shaw
Prothonotary/Clerk of Courts

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
CIVIL DIVISION

Kathryn Clever, Individually, as the (
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Richard Clever (
 (
Vs (No. 2006-1487-CD
 (
 (
Yourga Trucking, Inc., B and D Leasing, Inc., and (
Gerald E. Murray (

ORDER OF COURT

AND NOW, to wit this _____ day of _____ 2007, upon consideration of
the foregoing Petition, it is hereby ordered that a hearing shall be held on this Petition on
the _____ day of _____ 2007, at _____ O'clock ___ M in Court
Room number _____, Clearfield County Court House, Clearfield Pennsylvania.

BY THE COURT

Judge

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
CIVIL DIVISION

Kathryn Clever, Individually, as the ()
Administratrix of the Estate of ()
Richard Clever ()
()
()
Vs () No. 2006-1487-CD
()
()
Yourga Trucking, Inc., B and D Leasing, Inc., and ()
Gerald E Murray ()

ORDER OF COURT

AND NOW TO WIT, upon consideration of the foregoing Petition, is hereby Ordered that the prayer of said Petition is granted. Petitioner Katherine Cleaver is given leave of Court to settle the Wrongful Death Action filed in this matter for the total sum of \$330,000.00 and to execute whatever documents are necessary to consummate the settlement. Distribution of the settlement proceeds shall be as follows:

- a. The sum of \$219,364.69 to Katherine Cleaver;
- b. The sum of \$110,000 to Attorney James D. Belliveau for fees for services rendered in this matter.
- c. The sum of \$635.31 to Attorney James D. Belliveau to reimburse him for his out of pocket costs.

BY THE COURT

FILED
05/07/2007
MAY 07 2007
cc: *Att'y*
ATTY
Belliveau

William A. Shaw
Prothonotary/Clerk of Courts

Judge
⑥

5-7-07

FILED

MAY 07 2007

**William A. Shaw
Prothonotary/Clerk of Courts**

DATE 5/7/07

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions: