

2014 NOV 17 AM 11:25

IN THE COURT OF CLAIMS OF OHIO

ORIGINAL

LAURA A. MARTIN, Etc.,	:	Case No. 2013-00432
	:	
Plaintiff,	:	Judge Patrick M. McGrath
	:	
-VS-	:	
	:	
OHIO DEPARTMENT OF	:	
TRANSPORTATION,	:	<u>PLAINTIFF'S PRETRIAL</u>
	:	<u>STATEMENT</u>
Defendant.	:	

Pursuant to Local Rule 7, plaintiff hereby files her Pretrial Statement as follows:

I. FACTUAL AND LEGAL ISSUES

The plaintiff's ward, Sarah Martin, suffered catastrophic injuries, including a traumatic brain injury, when she struck the rear of an ODOT truck on US 35 in Jackson, Ohio on December 27, 2012 at approximately 12:45 p.m. ODOT was conducting a mobile operation in the left berm of eastbound US 35. The mobile operation consisted of two ODOT dump trucks. The lead truck was sweeping gravel from the berm while the second truck, a "shadow" vehicle, was following behind and acting as protection for the lead vehicle. The shadow vehicle was taking up almost all of the left lane of US 35 before impact and was traveling 12-15 m.p.h. It had operational flashing strobe lights as a warning to approaching traffic. The impact was in the left lane of eastbound US 35.

ODOT failed to close the left lane as required by The Manual of Uniform Traffic Control Devices ("The Manual"). ODOT also failed to provide early warning to approaching traffic of a slow moving operation ahead. The driver of the lead vehicle, upon receiving his assignment that morning,

ON COMPUTER

expressed concern to his supervisor over the safety of the operation. When the supervisor dismissed his concerns, the driver took several "Road Work Ahead" signs from the ODOT garage and put them in his truck. He placed them on either side of westbound US 35 where they first began the road work. He neglected to place signs on the eastbound lanes which would have alerted Sarah Martin to the road work ahead. ODOT Safety Director Edward Cox testified the left lane should have been closed and questioned why an attenuator was not used by ODOT when one was available in the local ODOT garage.

The legal issues are limited to whether ODOT failed to comply with The Manual and failed to comply with industry standards regarding slow moving mobile operations on a highway.

II. SIGNIFICANT EVIDENTIARY QUESTIONS

Plaintiff does not anticipate any significant evidentiary/legal issues.

III. PLAINTIFF'S WITNESS LIST

1. Sarah Martin;
2. Laura Martin;
3. John Martin;
4. Edward Cox;
5. James Roach;
6. Sammy Smith;
7. David Walton;
8. Troy Huff;
9. Wade Humphreys;
10. Ohio State Highway Patrol Officers;
11. James Sobek; and
12. Kevin O'Connor.

Plaintiff reserves the right to call any witness listed by the defendant.

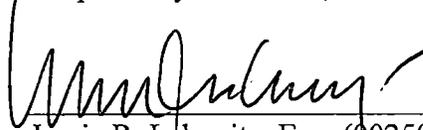
IV. PLAINTIFF'S EXHIBIT LIST

1. The Manual of Uniform Traffic Control Devices, relevant sections;
2. CDL Manual;
3. Maps of US 35;
4. Sobek Exhibits;
5. O'Connor Exhibits;

6. Accident Scene Photographs;
7. ODOT Employee Injury/Illness Report;
8. Written Statement of Edward Cox;
9. Photographs of road signs; and
10. Ohio State Highway Patrol Report.

Plaintiff reserves the right to introduce any exhibit listed by the defendant.

Respectfully submitted,



Jamie R. Lebovitz, Esq. (0025000)
Ellen M. McCarthy, Esq. (0046757)
Jordan D. Lebovitz, Esq. (0091247)
NURENBERG, PARIS, HELLER
& McCARTHY CO. L.P.A.
1370 Ontario Street - Suite 100
Cleveland, Ohio 44113
(216) 621-2300; Fax (216) 771-2242
Email: Jlebovitz@nphm.com
Email: Emccarthy@nphm.com
Email: JordanLebovitz@nphm.com

Attorneys for Plaintiffs

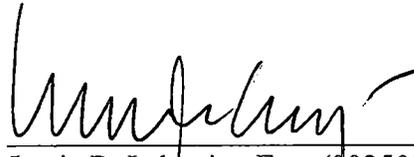
SERVICE

A copy of the foregoing **Plaintiff's Pretrial Statement** has been sent by regular U.S.

Mail and Email, this 14 day of November, 2014, to the following counsel of record:

Peter E. DeMarco, Esq. (0002684)
Stacy Hannan, Esq. (0081094)
Assistant Attorneys General
Court of Claims Defense
150 East Gay Street, 18th Floor
Columbus, Ohio 43215
(614) 466-7447; Fax (614) 644-9185
Email: Peter.Demarco@OhioAttorneyGeneral.gov
Email: StacyHannan@OhioAttorneyGeneral.gov

Attorneys for Defendant
Ohio Department of Transportation



Jamie R. Lebovitz, Esq. (0025000)
Ellen M. McCarthy, Esq. (0046757)
Jordan D. Lebovitz, Esq. (0091247)

Attorneys for Plaintiffs

LAW OFFICES OF
NUREMBERG, PARIS, HELLER & MCCARTHY CO., L.P.A.
1370 ONTARIO STREET • SUITE 100 • CLEVELAND, OHIO 44113-1792
(216) 621-2300

NURENBERG □ PARIS

— NURENBERG PARIS HELLER & McCARTHY —

A Legal Professional Association

Ellen M. McCarthy, Esq.
(216) 694-5205
email: EMcCarthy@nphm.com

FILED
COURT OF CLAIMS
OF OHIO

2014 NOV 17 AM 11:25

November 14, 2014

Via Federal Express

Court of Claims of Ohio
The Ohio Judicial Center, Clerk of Courts
65 South Front Street, Third Floor
Columbus, Ohio 43215

Re: Case No.: 2013-00432
Laura A Martin, Guardian of Sarah E. Martin, et al. v. State of Ohio, et al.
My File Number: 76976

Dear Sir or Madam:

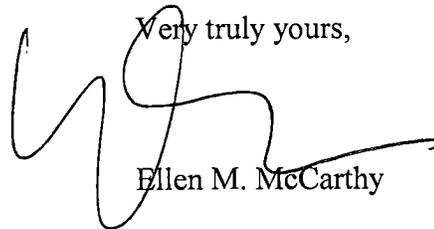
Enclosed please find an original and several copies of the following:

1. Plaintiff's Pretrial Statement.

Please file the original and return any extra time-stamped copies to my attention in the envelope I have provided. *IBN*

Please feel free to contact me if you have any questions.

Very truly yours,



Ellen M. McCarthy

EMM:mes
Enc.

