

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

ERIC HEIN, WENDY HEIN,
And LEE HUNT, as Personal Representative
of the Estate of RILEY HEIN, deceased;

Plaintiffs,

v.

No. D-101-CV-2016-01541

UTILITY TRAILER MANUFACTURING COMPANY,
a California corporation,

Defendant.

**THIRD AMENDED COMPLAINT FOR WRONGFUL DEATH AND LOSS OF
CONSORTIUM**

Plaintiffs Eric Hein and Wendy Hein, the parents of Riley Hein; and Lee Hunt, the Personal Representative for the wrongful death claims of Riley Hein, deceased, through their counsel, McGinn, Montoya, Love & Curry, for their Third Amended Complaint against Defendant Utility Trailer Manufacturing Company, state:

PARTIES, JURISDICTION AND VENUE

1. Riley Hein, age 16, was a resident and domiciliary of Tijeras, Bernalillo County, New Mexico when he was killed on November 13, 2015.
2. Plaintiff Lee Hunt resides in Santa Fe, Santa Fe County, New Mexico and has been duly appointed Personal Representative of the Wrongful Death Estate of Riley Hein.
3. Plaintiffs Eric Hein and Wendy Hein are the parents of Riley Hein. They were residents of Tijeras, Bernalillo County, New Mexico at the time of the crash that killed their son. Since his death, they have moved to Portland, Oregon.
4. Defendant Utility Trailer Manufacturing Company is a California corporation.

5. Upon information and belief, Defendant Utility Trailer Manufacturing Company's principal place of business is in City of Industry, California, but it sells trailers for use across the United States, including in New Mexico.

6. Defendant Utility Trailer Manufacturing Company's registered agent for service of process is Paul G. McNamara, 17295 E. Railroad Street, City of Industry, California 91748.

7. At all times pertinent hereto, Defendant Utility Trailer Manufacturing Company was acting through its employees or agents, who were acting in the course of their employment, and is responsible for their acts and omissions under the doctrines of agency or *respondeat superior*.

8. The events alleged in this Complaint occurred in Bernalillo County, New Mexico.

9. This Court has personal jurisdiction over all the named parties.

10. This Court has subject matter jurisdiction over this matter.

11. Venue is proper in this Court.

FACTUAL BASIS

Duties of Semitrailer Manufacturers

12. A company that profits from the design, manufacturing, and supplying of semitrailers has a duty to eliminate or mitigate known safety risks associated with the design of a semitrailer, which duty extends to every member of the public that shares the road with semitrailers.

Defendant Utility Trailer's Decision Not to Design or Retrofit Trailers with Side underride guards

13. Defendant Utility Trailer Manufacturing Company designs, manufactures, and is a supplier of semitrailers that are used in combination with tractors to haul freight on the interstates and other public roadways, including the roadways of New Mexico.

14. Defendant Utility Trailer designed, manufactured, and supplied the 53-foot semitrailer that was being used by Barkandhi Express driver Satwinder Singh to haul a load of frozen bread on November 13, 2015.

15. One of the risks associated with semitrailers is that of underride, which occurs when a small passenger vehicle collides with a semitrailer and slides under the semitrailer.

16. An underride collision is likely to result in death or very serious injury.

17. The dangers associated with underride collisions are well documented and have been known to the industry for decades.

18. For each year from 2005 to 2015, the Insurance Institute for Highway Safety documented that roughly 20% of fatal crashes between tractor-trailers and passenger vehicles involved a passenger vehicle that struck the side of a tractor-trailer.

19. The Insurance Institute for Highway Safety (IIHS) documented that in 2015, 301 passenger car occupants died in collisions involving semitrailers in which a passenger car struck the side of a semitrailer.

20. Because of the dangers associated with side underride collisions, trailer manufacturers and other designers have developed “side underride guards,” which prevent small passenger cars from sliding underneath a semitrailer on impact.

21. A side underride guard is a type of bumper that extends downward from the bottom of the trailer.

22. A side underride guard can prevent a smaller passenger car from sliding underneath the side of the semitrailer.

23. Testing has demonstrated the effectiveness of side underride guards in reducing the severity of injuries involved in underride collisions.

24. The risk of sliding under a trailer on impact from the side is especially reduced when the collision involves a passenger car traveling the same direction as the trailer, as opposed to a T-bone collision in which the car crashes into the trailer at an approximately 90-degree angle.

25. In the 1960s, a study commissioned by the federal government concluded that the use of side underride guards would reduce or eliminate the occurrence of underride collisions, thereby reducing the severity of crashes in which passenger cars collide with the side of a semitrailer.

26. By 1970, the federal government had called on the industry to voluntarily implement side underride guards in the designs of all newly manufactured semitrailers.

27. A 2012 study published by the IIHS found that strong underride guards reduced the risk of injury in about 90 percent of large truck side crashes involving passenger vehicles and trucks with semitrailers attached.

28. Because of the dangers associated with underride collisions, the federal government requires the use of underride guards on the rear end of all semitrailers, preventing or minimizing the risk of passenger cars sliding underneath the trailer on impact from behind.

29. At least three large cities, New York, Boston, and Seattle, require side underride guards to be used on city-owned or contracted trucks.

30. Although the federal government has not yet adopted a regulation mandating the use of side underride guards, it does mandate the use of underride guards on the rear of trailers.

31. Collisions involving underride on the side of a trailer are just as deadly as collisions involving underride on the rear of a trailer.

32. Organizations including IIHS have found side underride guards to be cost-effective.

33. When combined with an aerodynamic side skirt, which occupies the same length of space between the wheels of a semitrailer, a side underride guard improves the fuel efficiency of the tractor-trailer combination.

34. It was economically feasible for Utility Trailer to equip the semitrailer involved in this case with side underride guards at the time it was designed and manufactured.

35. Over a dozen different designs of side underride guards are available to trailer manufacturers, in addition to the designs offered by some trailer manufacturers themselves.

36. Utility Trailer has the technological capability to equip each trailer it manufactures with a side underride guard.

37. Upon information and belief, Utility Trailer does not routinely manufacture trailers with side underride guards, or recommend retrofitting its trailers already on the road with such guards.

38. If the Barkandhi Express trailer in this case had been equipped with a side underride guard, Riley Hein's car would not have become trapped underneath the trailer.

39. Utility Trailer is well aware of the deadly threat its trailers without side underride guards pose to the traveling public, having been sued in 2010 by the estate of a police officer whose Suburban collided head-on with a Utility semitrailer and underrode the trailer because of the lack of a side underride guard, causing severe injuries ultimately causing the death of the officer.

40. Despite this notice of the unreasonably dangerous nature of its trailers without side underride guards, Utility Trailer continued to manufacture, market and sell trailers without them.

41. Utility Trailer, along with other major trailer manufacturers and their industry-created organization, the Truck Trailer Manufacturers Association (TTMA), conspired by words or acts to avoid their safety obligations to the traveling public by agreeing:

- a. Not to develop side underride guards;
- b. To fight and lobby against any and all efforts to require semitrailers to be equipped with side underride guards; and
- c. To hide from the public the information and knowledge they have about side underride collisions and side underride guards under the guise of “confidentiality,” pursuant to a “joint defense agreement.”

November 13, 2015 crash that killed Riley Hein

42. On November 13, 2015, Satwinder Singh was driving a semi-truck on behalf of Barkandhi Express, traveling westbound on Interstate 40.

43. Satwinder Singh was accompanied in the tractor by his co-driver, Amandeep Singh.

44. The gross combination weight, or gross combination weight rating, of the semi-truck and trailer being operated by Singh exceeded 26,001 pounds.

45. Because the gross combination weight or gross combination weight rating of the semi-truck and trailer being operated by Singh exceeded 26,001 pounds, the semi-truck and trailer combination was a “commercial motor vehicle” as that term is defined and used in the Federal Motor Carrier Safety Regulations.

46. As Satwinder Singh approached Dead Man’s Curve, he was driving in the center lane of the westbound portion of the interstate.

47. Upon information and belief, as Satwinder Singh approached Dead Man’s Curve, whether because of having driven excessive hours, being tired or other reasons, he was not paying adequate attention to the traffic around him.

48. Upon information and belief, as Satwinder Singh approached Dead Man’s Curve, he was not monitoring his truck’s no-zones.

49. Upon information and belief, as Satwinder Singh approached Dead Man’s Curve, he was driving in excess of the posted speed limit of 65 mph.

50. As Singh approached Dead Man's Curve, 16-year-old Riley Hein entered westbound I-40 at exit 175 on his way to Manzano High School.

51. Riley Hein was driving in the right lane of westbound I-40, to the right of the semi-truck.

52. As Singh and Riley Hein drove through Dead Man's Curve, the Barkandhi Express rig crossed the right side of the center lane.

53. Because Singh was speeding and not paying attention to the road or the traffic, he allowed his truck to cross into the right lane of westbound I-40.

54. Singh then decided to change lanes and moved into the right lane, which was occupied by Riley Hein's Honda Civic.

55. If Singh had been watching his mirrors and surveilling his no-zones appropriately, he would have seen Riley Hein's car.

56. Upon information and belief, Barkandhi's tractor struck Riley Hein's car as the tractor crossed into the right lane.

57. Riley Hein's car veered onto the shoulder, then back onto the road, where it struck the trailer being hauled by Singh's truck.

58. Upon information and belief, because the Utility trailer Mr. Singh was hauling was not equipped with a side underride guard, Riley Hein's car became trapped underneath Singh's trailer, which continued to move at highway speeds.

59. Despite the fact that his truck had collided with the car, Singh continued to drive for approximately 1,500 feet with Riley Hein's car pinned underneath the trailer.

60. Singh then moved the rig onto the shoulder, causing the car to scrape a cement Jersey barrier as the rig continued to drag the car.

61. As the car was being dragged by the trailer along the concrete barrier, the car caught fire.

62. When Singh finally came to a stop, Riley Hein's car was engulfed in flames.

63. Because the trailer had also caught fire, Singh and his co-driver, Amandeep Singh, detached the tractor from the trailer and moved the tractor away from the fire.

64. Sixteen-year-old Riley Hein, trapped in the car, was burned on over 75 percent of his body surface and was pronounced dead at the scene.

COUNT I
STRICT PRODUCTS LIABILITY FOR DEFECTIVE DESIGN
(DEFENDANT UTILITY TRAILER)

All previous paragraphs are incorporated herein by reference.

65. Defendant Utility Trailer designed, manufactured, distributed, sold, marketed and/or promoted the 2016 model trailer involved in the collision at issue in this case, with vehicle identification number 1UYVS2531GU303503.

66. The trailer was expected to, and did, reach end users, including the driver of the tractor-trailer combination involved in the November 13, 2015 crash at issue in this case, without a substantial change in the condition in which it was sold.

67. The Utility trailer was used for its intended or reasonably foreseeable purpose.

68. The Utility trailer involved in the November 13, 2015 crash was dangerous, unsafe and posed an unreasonable risk of injury because of a condition in the product—namely, the unprotected space between the bottom of the trailer and the ground, in which a smaller vehicle could become trapped.

69. The trailer was unreasonably dangerous and posed an unreasonable risk of injury to motorists sharing the road with the Utility trailer because the trailer did not have a device such as a side underride guard to prevent passenger cars from underriding the trailer.

70. This condition of the trailer existed at the time the trailer left Defendant Utility Trailer's control.

71. The semitrailer's design without side underride guards caused Riley Hein's car to become trapped underneath the trailer when Barkandhi Express's driver merged into the right lane of westbound Interstate 40, colliding with Riley's car.

72. Because the car was trapped under the trailer, when the Barkandhi Express tractor-trailer began to move toward the shoulder, the trailer dragged the car against the cement Jersey barrier, igniting the fuel in the fuel tank and causing the car to catch fire.

73. Because the car was trapped under the trailer, Riley Hein had no way to escape from the car and burned to death.

74. Upon information and belief, Utility Trailer knew of the defective design and intentionally, recklessly, negligently or in conscious disregard of the safety of the traveling public, decided not to:

- a. Manufacture its trailers with side underride guards; or
- b. Sell all trailers with side underride guards.

75. As a direct, legal, and proximate result of Utility Trailer's unreasonably dangerous design and manufacture of a trailer without side underride guards, Plaintiffs' decedent Riley Hein died, resulting in funeral expenses, medical expenses, lost earning capacity, lost household services, property damage, lost value of life, and pain and suffering, as well as the damages for loss of consortium set forth in Count IV.

76. Riley Hein's wrongful death was accompanied by aggravating circumstances.

77. The intentional, willful, and reckless conduct by the Defendant merits an award of punitive damages.

COUNT II
NEGLIGENCE, RECKLESSNESS OR WILLFUL CONDUCT IN PRODUCT DESIGN
AND MANUFACTURING AND LOST CHANCE AT A BETTER OUTCOME
(DEFENDANT UTILITY TRAILER)

All previous paragraphs are incorporated herein by reference.

78. Defendant Utility Trailer had a duty to design, test and manufacture its semitrailers to eliminate or mitigate the risk of serious injury and death posed by side underride collisions.

79. Collisions in which passenger vehicles collide with the side of a semitrailer are foreseeable to manufacturers of semitrailers.

80. Utility Trailer knew or should have known at the time that it designed and manufactured the semitrailer used by Barkandhi Express on November 13, 2015 that the absence of a side underride guard would increase the severity of injuries and damage caused by a collision between a passenger car and the semitrailer.

81. Despite knowing or having reason to know of the danger of side underride collisions, Utility Trailer negligently, recklessly, or willfully took no action to mitigate the risks and decided not to:

- a. Manufacture and sell all trailers with side underride guards;
- b. Adequately test its trailer design to eliminate or reduce the risk of underride collisions; or
- c. Warn purchasers and the traveling public about the danger of a trailer without an underride guard.

82. Defendant negligently, recklessly, or willfully breached its duty of ordinary care by continuing to design, manufacture, sell, and promote semitrailers not equipped with side underride guards or other side underride protection.

83. As a direct, legal, and proximate result of Utility Trailer's negligence, Plaintiffs' decedent Riley Hein died, and his estate is entitled to recover the damages as provided for in the law, including those set forth in paragraphs 75-77, and his parents are entitled to damages for loss of consortium set forth in Count IV.

84. As a direct, legal, and proximate result of Utility Trailer's negligence, Plaintiffs' decedent Riley Hein lost a chance at a better outcome when instead of simply colliding with the semitrailer, his car became trapped underneath the semitrailer, resulting in a fire and directly leading to his death.

COUNT III
CIVIL CONSPIRACY

All previous paragraphs are incorporated herein by reference.

85. At all times material, UTM was a party to an agreement with other major manufacturers of semitrailers and the industry-created group TTMA, to accomplish an unlawful purpose and/or a lawful purpose by unlawful means.

86. UTM and its co-conspirators sought to accomplish the lawful purpose of obtaining maximum profits for all of the co-conspirators by unlawful means including, but not limited to:

- a. Continuing to design, manufacture and sell semitrailers that the manufacturers knew to present an unreasonable risk of death or serious injury to occupants of passenger cars that collide with the sides of semitrailers;
- b. Choosing not to design a solution to the known and unreasonable risk of side underride;
- c. Imposing unreasonable restraints on the trade of after-market side underride guards by agreeing not to purchase them and offer them as optional equipment;

- d. Preventing legislation or regulations requiring manufacturers to design and manufacture their semitrailers with side underride guards;
- e. Hiding information from the public about the dangers of side underride collisions, the feasibility of side underride guards, and the lives that would be saved if all semitrailers were equipped with side underride guards;
- f. Preventing injured parties and their attorneys from sharing information about side underride collisions and side underride guards;
- g. Promoting bogus studies meant to discourage the development of side underride guards with exaggerated and misleading claims about alleged disadvantages of side underride guards; and
- h. Misinforming the public about side underride collisions and side underride guards.

87. In furtherance of the conspiracy, Defendant UTM manufactured and sold the semitrailer that killed Riley Hein despite knowing that the semitrailer presented an unreasonable risk of death or serious injury because of the lack of side underride safety protection.

88. Defendant's actions taken in furtherance of the conspiracy caused or contributed to cause the Plaintiffs' damages described in paragraphs 117 through 119, and the loss of consortium suffered by Riley's parents, set forth in Count IV.

COUNT IV **LOSS OF CONSORTIUM**

All previous paragraphs are incorporated herein by reference.

89. Riley Hein was living at home with his parents at the time of his death.

90. Both Eric and Wendy Hein, Riley's parents, had extremely close and loving relationships with Riley up until his death.

91. It was foreseeable that Eric and Wendy Hein would be harmed by the death of their son as a result of the negligent acts of the Defendants.

92. Eric and Wendy Hein were harmed by the death of their son as a result of the negligent acts of the Defendants.

93. The Defendants' negligence was the direct and proximate cause of the Plaintiffs' loss of consortium.

94. Eric and Wendy Hein possess individual claims for loss of consortium against Defendants.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs Eric and Wendy Hein request that a judgment be entered in their favor for their loss of consortium and punitive damages. Plaintiff Lee Hunt requests that a judgment be entered against Defendants for compensatory damages for wrongful death in an amount to be proven at trial, including aggravating damages; punitive damages, costs, pre-judgment and post-judgment interest, attorneys' fees, expenses and costs of suit, and such other relief as the Court deems just and proper.

Respectfully submitted,



McGINN
CARPENTER
MONTOYA
& LOVE

/s/ *Randi McGinn*

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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2018, I filed the foregoing document electronically through the Odyssey system, which caused all counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic filing:

/s/ *Michael E. Sievers*
Michael E. Sievers