

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

NATASHA SMITH MCGEE, as mother §
and next of kin of ZYANNA HARRIS, §
Deceased, and ROBERT BYNUM, as §
father and next of kin of ZYANNA §
HARRIS, Deceased §

V. §

DURHAM SCHOOL SERVICES, L.P., §
NATIONAL EXPRESS, LLC §
JOHNTHONY WALKER, §
individually as an employee and/or agent §
of Durham School Services, L.P. and §
National Express, LLC, and THOMAS §
BUILT BUSES, INC. §

DOCKET NO: 16ca406

DIVISION:

JURY DEMAND

FILED IN OFFICE
2016 DEC -9 PM 12:46
LARRY L. HENRY, CLERK
BY: HN
SC

COMPLAINT

Plaintiffs Natasha Smith McGee, as Mother and next of kin of Zyanna Harris, deceased, and Robert Bynum, as Father and next of kin of Zyanna Harris, deceased, file this action arising out of the wrongful death of Zyanna Harris against the Defendants, Durham School Services, L.P, National Express, LLC, and Johnthony Walker, individually and as an employee and/or agent of Durham School Services, L.P. and National Express, LLC, and Thomas Built Buses, Inc. and state as follows:

I. PARTIES

1. Plaintiff, Natasha Smith McGee, is bringing this action as the mother and next of kin of Zyanna Harris, who was a minor resident of the State of Tennessee. Natasha Smith McGee is a resident citizen of Hamilton County, Tennessee. This Plaintiff is a proper party to bring this action for the wrongful death of Zyanna Harris pursuant to Tenn. Code Ann. § 20-5-101 *et seq.*, including but not limited to Tenn. Code Ann. § 20-5-106 and 20-5-107 and any other applicable

law. Plaintiff is bringing this action in her individual capacity and in her representative capacity as next of kin on behalf of all appropriate wrongful death beneficiaries.

2. Plaintiff, Robert Bynum, is bringing this action as the father and next of kin of Zyanna Harris, deceased, who was a minor resident of the State of Tennessee. Robert Bynum is a resident citizen of Hamilton County, Tennessee. This Plaintiff is a proper party to bring this action for the wrongful death of Zyanna Harris pursuant to Tenn. Code Ann. § 20-5-101 *et seq.*, including but not limited to Tenn. Code Ann. § 20-5-106 and 20-5-107 and any other applicable law. Plaintiff is bringing this action in his individual capacity and in his representative capacity as next of kin on behalf of all appropriate wrongful death beneficiaries.

3. Plaintiffs Natasha Smith McGee and Robert Bynum shall be referred to as “Plaintiffs” throughout this action.

4. Defendant Durham School Services, L.P. (“Durham”) is a Delaware Corporation with its principle address and place of business at 1431 Opus Place, Suite 200, Downers Grove, Illinois, 60515. Defendant is licensed to do business in Tennessee and may be served through its agent for service of process, CT Corporation System, 800 S. Gay Street, Suite 2021, Knoxville, Tennessee 37929-9710.

5. Defendant National Express, LLC (“NELLC”) is a Delaware corporation with its principal place of business at 4300 Weaver Parkway in Warrenville, Illinois and may be served through its registered agent, CT Corporation, 208 S. LaSalle Street, Suite 814, Chicago, Illinois 60604.

6. Defendants Durham and NELLC operate a full-service student transportation company through use of employees, agents, servants, and/or contractors who provide transportation services within the scope of their employment, apparent authority, agency or

contract to act for the corporation. Defendants Durham and NELLC are liable for their own negligence and the acts and omissions of its employees, agents, servants and contractors, including Defendant Johnthony Walker, by virtue of the doctrines of agency, apparent agency, implied agency, employer/employee relations, master-servant relations, joint-venture, joint and several liability, respondeat superior, vicarious liability, contract and as a result of their non-delegable duty to comply with both state and federal regulatory schemes. Upon information and belief, Defendants Durham and NELLC own and operate a number of school buses in the greater Chattanooga area.

7. Defendant Johnthony Walker is an adult resident of Hamilton County, Tennessee and may be served at the Hamilton County jail, where he is currently incarcerated. Upon information and belief, Defendant Walker was employed by and driving a vehicle owned by and in furtherance of the business of Defendants Durham and NELLC at all times pertinent hereto.

8. Defendant Thomas Built Buses, Inc. is a North Carolina corporation with its principal place of business at 1408 Courtesy Road, High Point, North Carolina and may be served with process through its registered agent, CT Corporation System, 160 Mine Lake Court, Raleigh, North Carolina 27615.

II. JURISDICTION AND VENUE

9. This Court has jurisdiction of this matter pursuant to Tenn. Code Ann. § 16-10-101, Tennessee's Wrongful Death Statutes, and other applicable laws.

10. Venue is proper in this Court pursuant to Tenn. Code Ann. § 20-4-101, because all or part of this cause of action arose within Hamilton County, Tennessee.

III. GENERAL ALLEGATIONS AND FACTS

11. On or about November 21, 2016, Defendant Walker was operating a school bus in the course and scope of his employment or agency with Defendants Durham and NELLC in Chattanooga, Hamilton County, Tennessee. At approximately 3:15 p.m., while transporting thirty-seven (37) children from Woodmore Elementary School, Defendant Walker was driving down a narrow and winding road well above the speed limit of thirty miles per hour. He lost control of the bus and swerved off the road, striking a mailbox and a utility pole. The bus then rolled onto its right side and collided with a tree. As a result of Mr. Walker's negligence, carelessness, and recklessness, six children—including Zyanna Harris—tragically died.

12. Defendant Walker, who received his commercial driver's license in April of 2016, had been involved in a previous school bus crash while driving for Defendants Durham and NELLC. Additionally, in the weeks leading up to the subject crash, students and parents had complained of Defendant Walker's driving.

13. The subject bus was designed, manufactured, marketed, assembled, distributed, tested, sold, maintained, and/or supplied by Thomas Built Buses, Inc.

IV. CAUSES OF ACTION

A. NEGLIGENCE AND GROSS NEGLIGENCE – DEFENDANT WALKER

14. At the time and on the occasion in question, Defendant Walker had a duty to exercise reasonable care in operating the subject school bus. Defendant Walker breached this duty by operating the bus in a negligent, careless, and reckless fashion, which caused the death of Zyanna Harris. Defendant Walker's acts of negligence, gross negligence and recklessness include, but are not limited to:

- (a) Failing to drive as an ordinary and prudent person would have under the conditions and circumstances;
- (b) Failing to exercise caution;
- (c) Failing to keep the vehicle under due and reasonable control;
- (d) Failing to control the speed of the vehicle;
- (e) Failing to devote full time and attention to the operation of the vehicle; and
- (f) Failing to keep a proper lookout.

15. The negligence, gross negligence, and recklessness described above directly and proximately caused the crash, which resulted in the death of Zyanna Harris and caused injuries and damages to Plaintiffs.

B. NEGLIGENCE PER SE – DEFENDANT WALKER

16. In addition to committing the common law acts of negligence described above, Defendant Walker was also operating a motor vehicle in violation of certain traffic statutes which were in full force and effect in the State of Tennessee at the time in question. Specifically, Defendant Walker violated the following statutes:

- (a) Tenn. Code Ann. § 55-10-205 – Reckless driving;
- (b) Tenn. Code Ann. § 55-8-136 – Drivers to exercise due care;
- (c) Tenn. Code Ann. § 55-10-1014 – Accidents involving death or personal injury;
- (d) Tenn. Code Ann. § 55-10-102 – Accidents involving damage to vehicle;
- (e) Tenn. Code Ann. § 55-10-103 – Duty to give information and render aid;
- (f) Tenn. Code Ann. § 55-8-152 – Speed limit; and
- (g) Tenn. Code Ann. § 55-8-152 – failure to maintain traffic lane.

17. Defendant Walker's violations of the aforementioned statutes constitute negligence per se. This negligence per se directly and proximately caused the crash, which resulted in the death of Zyanna Harris and caused injuries and damages to Plaintiffs.

C. VICARIOUS LIABILITY – DEFENDANTS DURHAM AND NELLC

18. At all times material to this suit, Defendant Walker was acting as an agent of Defendants Durham and NELLC, making Defendants Durham and NELLC vicariously liable for the conduct of Defendant Walker. Defendants Durham and NELLC were the owners of the vehicle driven by Defendant Walker at the time of the incident described herein. Accordingly, pursuant to Tenn. Code Ann. § 55-10-311, the vehicle was being operated by Defendant Walker with the authority, consent and knowledge of the owners and for the use and benefit of the owners. Therefore, the negligence, gross negligence, and recklessness of Defendant Walker are imputed to Defendants Durham and NELLC and Defendants Durham and NELLC are liable for all Plaintiffs' injuries and damages caused by Defendant Walker.

19. Upon information and belief, the vehicle Defendant Walker was operating at the time of the incident described herein was registered to Defendants Durham and NELLC. Accordingly, and pursuant to Tenn. Code Ann. § 55-10-312, the vehicle was being operated for the use and benefit of Defendants Durham and NELLC. Therefore, the negligence of Defendant Walker is imputed to Defendants Durham and NELLC and Defendants Durham and NELLC are liable for all Plaintiffs' injuries and damages.

D. NEGLIGENCE AND GROSS NEGLIGENCE – DEFENDANTS DURHAM AND NELLC

20. In addition to the acts and omissions of Defendants' servants, employees, agents, and contractors, Defendants Durham and NELLC directly breached their duties to the Plaintiff through various acts of omission and commission, including, but not limited to, the following:

- (a) Failing to have policies and procedures in place to ensure that all school bus drivers were properly hired, trained, supervised, investigated and disciplined;
- (b) Failing to properly hire, train, supervise, investigate and discipline school bus drivers; and
- (c) Failing to use the degree of skill and care required of a student transportation company under the circumstances there existing.

21. The negligence and gross negligence of Defendants Durham and NELLC described above directly and proximately caused the crash, which resulted in the death of Zyanna Harris and caused injuries and damages to Plaintiffs.

E. CAUSES OF ACTION AGAINST THOMAS BUILT BUSES, INC.

22. Additionally, Plaintiffs bring design defect, negligence and gross negligence claims against Thomas Built Buses, Inc.

1. Design Defect

23. At all times material to this lawsuit, Thomas was engaged in the business of designing, manufacturing, marketing, distributing, selling assembling, and/or supplying buses, including the subject bus, and placed the subject bus into the stream of commerce.

24. The subject bus was unreasonably dangerous and defective at the time it was designed, manufactured, distributed, sold, assembled, and/or supplied, for the following reasons:

- (a) The window system was defectively designed in that it failed to prevent contact between the window glass and the roadway in foreseeable overturn/slide events;
- (b) The window system was defective and unreasonably dangerous in that it failed to minimize the possibility of occupant ejection in foreseeable overturn/slide events; and
- (c) The bus did not include seatbelts.

25. With respect to the design of the subject bus, at the time it left the control of Thomas, there were safer alternative designs. Specifically, there were alternative designs utilizing a window system and/or window casing design with embedded glass to minimize

contact with the roadway that, in reasonable probability, would have prevented or significantly reduced the risk of injury or death, and the damages suffered by Plaintiffs. Moreover, there were designs which included seat belts that, in reasonable probability, would have prevented or significantly reduced the risk of injury or death, and the damages suffered by Plaintiffs. Such safer alternative designs were economically and technologically feasible at the time the products left the control of Thomas by the application of existing or reasonable achievable scientific knowledge.

26. The defective design, testing, distribution, sale and supply of the subject bus rendered it uncrashworthy, defective, and unreasonably dangerous and directly and proximately caused Zyanna Harris's death and Plaintiffs' injuries and damages.

27. Thomas's failure to use a safer alternative design was reckless, willful, wanton, heedless, and in flagrant disregard of public safety. As a result, Plaintiffs are entitled to recover actual and punitive and/or exemplary damages.

28. With regard to the design defect claim, Plaintiffs invoke the doctrine of strict liability in tort, as that term is understood and applied under all applicable law.

2. Negligence and Gross Negligence

29. Further, Thomas, and its agents, servants, and employees, for whose acts such Defendant is in all things responsible, were negligent in designing, manufacturing, marketing, assembling, distributing, selling, and/or supplying the subject bus. Thomas and its agents, servants, and employees engaged in several acts and omissions constituting negligence and gross negligence, and such acts and omissions, among others, were as follows:

- (a) In failing to properly design the subject bus, including its component parts and window system;

- (b) In failing to properly manufacture the subject bus, including its component parts and window system;
- (c) In failing to properly market and assemble the subject bus, including its component parts and window system;
- (d) In failing to properly inspect the subject bus, including its component parts and window system;
- (e) In failing to properly maintain the subject bus, including its component parts and window system; and
- (f) In failing to adequately warn the Plaintiffs and others, including the general public, regarding the use and operation of the subject bus, including its component parts and window system.

30. The aforementioned acts and/or omissions constituting negligence on the part of Thomas were a proximate cause of Zyanna Harris's death and the injuries and damages sustained by Plaintiffs.

V. DECLARATORY JUDGMENT

31. Plaintiffs lost their child as a result of this bus crash. This has caused, and will continue to cause severe emotional and psychological pain.

32. Under Tenn. Code Ann. § 29-39-102, the amount which an injured plaintiff may recover for noneconomic damages is capped at \$750,000.00. This provision conflicts with Article 1, section 6 of the Tennessee Constitution, which states, "[t]hat the right of trial by jury shall remain inviolate, and no religious or political test shall ever be required as a qualification for jurors." The artificial limit imposed by Tenn. Code Ann. § 29-39-102 is arbitrary, not based on quantifiable or objective factors, and is an unconstitutional interference with Plaintiffs' rights to have a jury quantify their noneconomic damages.

33. There is a controversy between Tenn. Code Ann. § 29-39-102 and Plaintiffs' right to an in inviolate trial by jury. It is necessary for this Court to determine the respective rights of the parties pursuant to Tenn. Code Ann. § 29-14-101 *et seq.*

VI. DAMAGES

34. The Defendants' acts and/or omissions were negligent and/or reckless and proximately caused the injuries and death of Zyanna Harris and Plaintiffs' damages. Further, said acts and omissions are the legal cause of Zyanna Harris's death and injuries prior to her death, all of which would not have occurred but for the acts or omissions of Defendants.

35. As a direct, legal, and proximate result of the negligence and gross negligence and/or reckless conduct by Defendants as described above, Zyanna Harris and Plaintiffs suffered injuries and damages. Plaintiffs are entitled to damages under all applicable law, including but not limited to, Tennessee's Wrongful Death Act. The injuries and damages for which Plaintiffs seek compensation include, but are not limited to:

- (a) Physical injuries, including the death of Zyanna Harris, and the resulting loss of familial association with her;
- (b) Conscious physical and emotional pain and suffering of Zyanna Harris, from the time of injury until her death, and her loss of the pleasures of life;
- (c) Funeral expenses for Zyanna Harris; and
- (d) The pecuniary value of the life of Zyanna Harris, including, but not limited to, the loss of companionship and consortium;
- (e) All such further relief, both general and specific, to which Plaintiffs may be entitled.

36. In addition to actual damages, Plaintiffs seek exemplary damages against Defendants because Defendants' acts and/or omissions proximately caused the death of Zyanna Harris and constitute recklessness and/or malice because their acts and/or omissions, when

viewed objectively at the time of the occurrence, involved an extreme degree of risk considering the probability and magnitude of the potential harm to others. Despite their actual, subjective awareness of the risk involved, they proceeded with conscious indifference to the rights, safety, and welfare of others. Accordingly, Plaintiff seeks exemplary damages under Tennessee law.

37. As a direct and proximate result of the recklessness and/or malice of Defendants, Plaintiffs are entitled to punitive damages in accordance with Tennessee law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Complaint be served on Defendants and demand that a jury trial be held wherein Plaintiffs are awarded compensatory damages in the amount of \$5,000,000.00 and punitive damages in the amount of \$500,000.00 Further, Plaintiffs request that the court award Plaintiffs their costs, including all court costs and discretionary costs, against the Defendants, and Plaintiffs be awarded any and all other further relief to which they may be entitled.

Respectfully submitted,

**ABRAHAM, WATKINS, NICHOLS,
SORRELS, AGOSTO & AZIZ**

MUHAMMAD S. AZIZ
(TO BE ADMITTED PRO HAC VICE)
800 Commerce Street
Houston, Texas 77002
(713) 222-7211
(713) 225-0827 Facsimile
maziz@abrahamwatkins.com


THE COX PRADIA LAW FIRM

TROY J. PRADIA
(TO BE ADMITTED PRO HAC VICE)
JONATHAN H. COX
(TO BE ADMITTED PRO HAC VICE)
1415 North Loop West, Suite 200
Houston, Texas 77008
(713) 739-0402
(713) 752-2812 (Fax)
tjp@coxpradialaw.com
jhc@coxpradialaw.com

ATTORNEYS FOR PLAINTIFF

-AND-

DALE L. BUCHANAN & ASSOCIATES



LUKE H. NEDER
State Bar No. 028444
1206 Pointe Centre Drive, Suite 110
Chattanooga, TN 37421
(423) 894-2552
(423) 894-1821 Facsimile
lneder@dalebuchanan.com

LOCAL COUNSEL