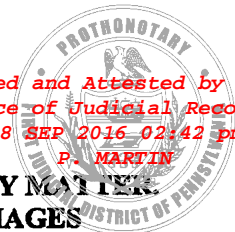


**LAW OFFICES OF VINCENT J. CIECKA, P.C.**  
**BY: JOSEPH J. URBAN, ESQUIRE**  
**Identification No.: 57369**  
**5709 Westfield Avenue**  
**Pennsauken, New Jersey 08110**  
**(856) 665-5709**  
Jurban@ciecka.com

Filed and Attested by the  
Office of Judicial Records  
08 SEP 2016 02:42 pm  
P. MARTIN



**THIS IS A MAJOR JURY MATTER.**  
**ASSESSMENT OF DAMAGES**  
**HEARING IS REQUIRED.**

**Attorney for Plaintiff(s)**

<p>SHANIKA LAKYIAH BROWN, Individually and  As Parent and Natural Guardian of  ASORIE ELIZABETH BROWN, MINOR  231 Evergreen Avenue  Apartment 29C  Woodbury, New Jersey 08096</p> <p style="text-align: center;">Plaintiffs</p> <p style="text-align: center;">v.</p> <p>SILVI CONCRETE PRODUCTS, INC.  355 Newbold Road  Fairless Hills, PA 19030</p> <p style="text-align: center;">And</p> <p>PENN JERSEY CERTIFIED CONCRETE, INC.  355 Newbold Road  Fairless Hills, PA 19030</p> <p style="text-align: center;">And</p> <p>CONSTRUCTURAL DYNAMICS, INC.  355 Newbold Road  Fairless Hills, PA 19030</p> <p style="text-align: center;">And</p> <p>BRIDGESTONE AMERICAS TIRE  OPERATIONS, LLC  116 Pine Street, 3<sup>rd</sup> Floor, Suite 320  Harrisburg, PA 17101</p> <p style="text-align: center;">And</p> <p>BRIDGESTONE BANDAG, LLC  116 Pine Street, 3<sup>rd</sup> Floor, Suite 320  Harrisburg, PA 17101</p> <p style="text-align: center;">And</p> <p>PAMELA B. REED  3 West Broad Street  Apt. 3E  Paulsboro, NJ 08066</p> <p style="text-align: center;">And</p> <p>MCCARTHY TIRE SERVICE CO., INC.</p>	<p>COURT OF COMMON PLEAS,  PHILADELPHIA COUNTY,  COMMONWEALTH OF  PENNSYLVANIA</p> <p>OCTOBER TERM, 2015</p> <p>No.: 000925</p> <p><b>STIPULATION OF THE  PARTIES TO AMEND THE  COMPLAINT PURSUANT TO  PA.R.C.P. 1033</b></p>
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**STIPULATION OF THE PARTIES TO AMEND THE  
COMPLAINT PURSUANT TO PA. R. C. P. 1033**

It is hereby STIPULATED and AGREED between Plaintiff Shanika Lakiyah Brown, both Individually and on behalf of Asorie Elizabeth Brown (a Minor), and McCarthy Tire Service Company; McCarthy Tire Service Co, Inc.; McCarthy Tire Service Company d/b/a McCarthy Tire Service Co, Inc.; McCarthy Tire Service Company of New York, Inc. (hereinafter collectively referred to as "The McCarthy Defendants") that Plaintiff may, in accordance with Pa R. C. P. 1033, Amend her Complaint so as to include include specific allegations against the McCarthy Defendants.

LAW OFFICES OF VINCENT J. CIECKA

By: /s/ Joseph J. Urban

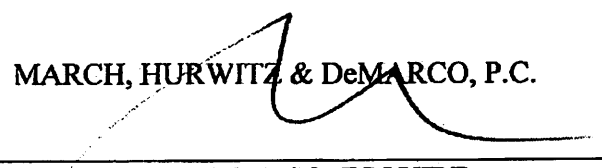
Joseph J. Urban, Esquire  
5709 Westfield Avenue  
Pennsauken, New Jersey 08110  
Jurban@ciecka.com  
(856)-665-5709

Attorney for Plaintiffs, Shanika Lakiyah  
Brown, Parent and Natural Guardian  
of Asorie Elizabeth Brown

Dated: 08/30/2016

MARCH, HURWITZ & DeMARCO, P.C.

Dated: September 7, 2016

  
\_\_\_\_\_  
JOSEPH M. DEMARCO, ESQUIRE  
KRISTEN E. LIZZANO, ESQUIRE  
*Attorney for Additional Defendants,  
McCarthy Tire Service Company,  
McCarthy Tire and Automotive Center, and  
McCarthy Tire Service Company of New York, Inc.*

**LAW OFFICES OF VINCENT J. CIECKA, P.C.**  
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Identification No.: 57369  
5709 Westfield Avenue  
Pennsauken, New Jersey 08110  
(856) 665-5709  
[Jurban@ciecka.com](mailto:Jurban@ciecka.com)

**THIS IS A MAJOR JURY MATTER.**  
**ASSESSMENT OF DAMAGES**  
**HEARING IS REQUIRED.**

**Attorney for Plaintiff(s)**

SHANIKA LAKIYAH BROWN, Individually and :  
As Parent and Natural Guardian of :  
ASORIE ELIZABETH BROWN, MINOR :  
231 Evergreen Avenue :  
Apartment 29C :  
Woodbury, New Jersey 08096 :

COURT OF COMMON PLEAS,  
PHILADELPHIA COUNTY,  
COMMONWEALTH OF  
PENNSYLVANIA

Plaintiffs

v.

OCTOBER TERM, 2015

SILVI CONCRETE PRODUCTS, INC. :  
355 Newbold Road :  
Fairless Hills, PA 19030 :

And

PENN JERSEY CERTIFIED CONCRETE, INC. :  
355 Newbold Road :  
Fairless Hills, PA 19030 :

And

CONSTRUCTURAL DYNAMICS, INC. :  
355 Newbold Road :  
Fairless Hills, PA 19030 :

And

BRIDGESTONE AMERICAS TIRE :  
OPERATIONS, LLC :  
116 Pine Street, 3<sup>rd</sup> Floor, Suite 320 :  
Harrisburg, PA 17101 :

And

BRIDGESTONE BANDAG, LLC :  
116 Pine Street, 3<sup>rd</sup> Floor, Suite 320 :  
Harrisburg, PA 17101 :

And

PAMELA B. REED :  
3 West Broad Street :  
Apt. 3E :  
Paulsboro, NJ 08066 :

And

MCCARTHY TIRE SERVICE CO., INC. :

No.: 000925

**FOURTH AMENDED**  
**CIVIL ACTION COMPLAINT**

340 Kidder Street :  
Wilks-Barre, Pennsylvania 18702 :  
And :  
MCCARTHY TIRE SERVICE COMPANY :  
340 Kidder Street :  
Wilks-Barre, Pennsylvania 18702 :  
And :  
MCCARTHY TIRE SERVICE COMPANY :  
D/B/A MCCARTHY TIRE SERVICE CO., INC. :  
340 Kidder Street :  
Wilks-Barre, Pennsylvania 18702 :  
And :  
MCCARTHY TIRE SERVICE COMPANY :  
OF NEW YORK :  
340 Kidder Street :  
Wilks-Barre, Pennsylvania 18702 :  
Defendants :

## NOTICE TO DEFEND

### NOTICE

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 or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.*

Philadelphia Bar Association  
Lawyer Referral  
and Information Service  
One Reading Center  
Philadelphia, Pennsylvania 19107  
(215) 238-6333  
TTY (215) 451-6197

### AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascntar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

*Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.*

Asociacion De Licenciados  
De Filadelfia  
Servicio De Referencia E  
Informacion Legal  
One Reading Center  
Filadelfia, Pennsylvania 19107  
(215) 238-6333  
TTY (215) 451-6197

**FOURTH AMENDED COMPLAINT**  
**2V-Motor Vehicle Accident**

Plaintiff, Shanika Lakiyah Brown, both individually and on behalf of Asorie Elizabeth Brown (a Minor), brings the following civil causes of action for their personal injuries incurred as a proximate result of the conduct of the following Defendants which are jointly and severally liable: Silvi Concrete Products, Inc.; Penn Jersey Certified Concrete, Inc. and Constructural Dynamics, Inc. (hereinafter collectively referred to as the “Silvi Defendants”); Bridgestone Americas Tire Operations, LLC, Bridgestone Bandag, LLC, a subsidiary of Bridgestone Americas Tire Operations, LLC (hereinafter collectively referred to as “the BATO Defendants”), McCarthy Tire Service Company; McCarthy Tire Service Co, Inc.; McCarthy Tire Service Company d/b/a McCarthy Tire Service Co, Inc.; McCarthy Tire Service Company of New York, Inc. (hereinafter collectively referred to as “The McCarthy Defendants”) and Pamela B. Reed.

**I.**

**THE PARTIES**

1. The Plaintiff, Shanika Lakiyah Brown, is an adult citizen of the State of New Jersey, residing at 231 Evergreen Avenue, Apartment 29c, in the City of Woodbury, County of Gloucester.

2. Shanika Brown is the parent and natural guardian of Asorie Elizabeth Brown, a minor child.

3. The Silvi Defendants are domestic Pennsylvania business entities that regularly engage in the business of manufacturing, selling, transporting and delivering of ready-mix concrete.

4. The Silvi Defendants submitted themselves to the jurisdiction and venue of this Court by doing, personally or through their agents, at all times material to this cause of action the

following acts:

- (a) Conducting and engaging in substantial business and other activities in the Commonwealth of Pennsylvania and the County of Philadelphia by marketing, selling and/or delivering ready-mix concrete to persons, firms or corporations in this Commonwealth and County via its agents, distributors, wholesalers, dealers and/or brokers. Their product was used by consumers in the Commonwealth of Pennsylvania and the County of Philadelphia in the ordinary course of commerce and trade;
- (b) Engaging in acts and/or omissions as described in this Complaint, which caused an automotive accident which resulted with the serious and permanent injuries to Shanika Lakiyah Brown and Asorie Elizabeth Brown, minor child. At about the time of said injuries to Plaintiffs, the Silvi Defendants engaged in solicitation activities in the Commonwealth of Pennsylvania and the County of Philadelphia to promote the sale, consumption, use and delivery of their product;
- (c) In transporting ready-mix concrete in vehicles which would travel the highways of the Commonwealth of Pennsylvania and the County of Philadelphia, the Silvi Defendants, they had reason to foresee the vehicles used to transport their product and the component parts such as the tires on their vehicles could fail and endanger other drivers;
- (d) Silvi Concrete has admitted in the case of *Angela Gabrielle, et al. v. Silvi Concrete Products, Inc., et al.*, Philadelphia County Court of Common Pleas Law Division, No. 3096, January Term, 2015, that they conduct regular business in Philadelphia County amounting to 4 percent of its annual sales. Additionally, Silvi Concrete announced this year on its website of expanding its marketplace to the five county Philadelphia area; and
- (e) Voluntary qualifying to conduct business in this Commonwealth by registering with the Pennsylvania Division of Corporations Bureau.

5. Defendant, Bridgestone Americas Tire Operations, LLC, is a Delaware Limited Liability Company registered to do business in Pennsylvania. Their principal office is located at 535 Marriot Drive, Nashville, TN 37214. They can be served through their Registered Agent, National Registered Agents, Inc., 116 Pine Street, 3<sup>rd</sup> Floor, Suite 320, Harrisburg, PA 17101. BATO is in the business of designing, manufacturing, testing and tracking performance of passenger and commercial tires.



6. Defendant, Bridgestone Bandag LLC, is a foreign limited liability company incorporated in Iowa and registered to do business in the Commonwealth of Pennsylvania. Their principal office is located at 2905 N. Highway 61, Muscantine, IA 52761 under the name of Bridgestone Bandag Tire Solutions (hereinafter “Bandag”). They can be served through their Registered Agent, National Registered Agents, Inc., 116 Pine Street, 3<sup>rd</sup> Floor, Suite 320, Harrisburg, PA 17101.

7. Bandag was acquired by Bridgestone Americas in June of 2007 and is a wholly owned subsidiary.

8. Bandag manufactures retreading materials and equipment for its network of more than its 800 franchise Bandag dealers, its actual agents, and/or its ostensible agents that produce and market retread tires including, but not limited to the McCarthy Defendants which are registered with Pennsylvania’s Department of State as domestic Pennsylvania business entities or, as is the situation with McCarthy Tire Service Company of New York, Inc., publicly hold themselves out as having a principal place of business in the Commonwealth of Pennsylvania. Their dealer network offers tire retreading and repairing to tire management systems outsourcing for commercial truck fleets.

9. The BATO Defendants submitted themselves to the jurisdiction and venue of this Court by doing, personally or through their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants), at all times material to this cause of action the following acts:

- (a) Conducting and engaging in substantial business and other activities in the Commonwealth of Pennsylvania and the County of Philadelphia through their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants) in Pennsylvania, including the County of Philadelphia, by marketing, providing and selling retread tires for use by businesses and consumers in Pennsylvania and Philadelphia;

- (b) Conducting specific and relevant contractual activities in the Commonwealth of Pennsylvania by entering into franchise agreements and other business contracts, including joint venture agreements, with the McCarthy Defendants (themselves domestic Pennsylvania business entities), whereby the BATO Defendants would provide the McCarthy Defendants with the training and equipment necessary to perform Bandag tire retreads, including the retreading of the subject tire of this litigation;
- (c) Engaging in acts and/or omissions as described in this Complaint, which caused an automotive accident resulting in serious and permanent injuries to Shanika Lakiyah Brown and Asorie Elizabeth Brown, minor child. At about the time of said injuries to Plaintiffs, BATO, through its subsidiary Bandag and their dealer network engaged in solicitation activities in the Commonwealth of Pennsylvania and the County of Philadelphia to promote the sale, consumption, use and delivery of their product. Specifically, as detailed herein, BATO contracted with McCarthy Defendants (themselves domestic Pennsylvania business entities) to provide to McCarthy Defendants the entirety of the alleged defective Bandag system/process McCarthy utilized to retread the subject tire which caused the underlying accident. Though the Bandag system McCarthy Defendants received the tire machinery, all employee training, and physical stock, including cured and uncured rubber components, to perform the retread of the subject tire;
- (d) In providing retread tires for vehicles which would travel the highways of the Commonwealth of Pennsylvania and the County of Philadelphia, BATO and its subsidiary Bandag, had reason to foresee the vehicles using their tires could fail and endanger other drivers;
- (e) Voluntary qualifying to conduct business in this Commonwealth by registering with the Pennsylvania Division of Corporations Bureau' and
- (f) Alternatively being subject to venue in the Philadelphia County Court of Common Pleas due to the existence of joint tortfeasor defendants being properly subjected to venue in Philadelphia County (including the Silvi Defendants) pursuant to the joint tortfeasor venue rule, set forth in Pa. R. C. P. 1006(c)(1), and given further clarity by the Pennsylvania Supreme Court in *Zappala v. Brandolini Prop. Mgmt.*, 589 Pa. 516 (Pa. 2006).

10. As previously referenced, the McCarthy Defendants are domestic Pennsylvania business entities or, as is the situation with McCarthy Tire Service Company of New York, Inc., publicly hold themselves out as having a principal place of business in the Commonwealth of Pennsylvania.

11. Upon information and belief, the McCarthy Defendants regularly conduct business in Philadelphia County from which they derive significant revenue.

12. The McCarthy Defendants are also subject to venue in the Philadelphia County Court of Common Pleas due to the existence of joint tortfeasor defendants being properly subjected to venue in Philadelphia County (including the Silvi Defendants) pursuant to the joint tortfeasor venue rule, set forth in Pa. R. C. P. 1006(c)(1), and given further clarity by the Pennsylvania Supreme Court in Zappala.

13. Defendant, Pamela B. Reed, was the owner and driver of the Saturn Relay vehicle involved in the subject accident. She is a resident of New Jersey residing at 3 West Broad Street, Apt. 3E, Paulsboro, NJ 08066.

14. At all times relevant hereto, Defendants acted or failed to act by and through their agents, including but not limited to ostensible agents, franchise dealers, servants workmen and/or employees acting in the course and scope of their employment.

## II.

### **FACTUAL BACKGROUND**

15. On or about July 3, 2015, Plaintiffs, Shanika Lakiyah Brown and her infant daughter, Asorie Elizabeth Brown were passengers in a Saturn Relay owned and operated by Defendant, Pamela Reed. The vehicle was traveling north in the right lane on Interstate 295 north, in the area of milepost 21.4, West Deptford Township, Gloucester County, New Jersey. In this area, Interstate 295 consists of six travel lanes. Three lanes are for northbound vehicular traffic and three lanes are for southbound traffic. These travel lanes are separated by a concrete median barrier.

16. The Saturn Relay has three rows of seats. According to the police report,

Defendant, Pamela Reed was in the driver seat, Karen Thomas was in the front passenger seat and Plaintiff, Shanika Brown, was in the middle seat with her daughter, Asorie, who was in a child seat. Poindexter Brown was in the rear seat.

17. A 2010 Oshkosh SGL cement truck owned by the Silvi Defendants and operated by David Barrientos was traveling northbound ahead of the Reed vehicle when the left rear tire located on the rearmost axle, a Bridgestone L315, size 445/65R22.5, DOT 2CB23YF0208, suffered a catastrophic circumferential tread separation. As a result thereof, the tread was thrown from the vehicle into traffic behind of the cement truck. Numerous vehicles were caused to take emergent and evasive action to avoid collision with not only the tread, but with the other vehicles in the same circumstance. Upon information and belief, two vehicles, including the Reed Defendant vehicle, were struck by the tread and pushed from the roadway at highway speeds.

18. According to information in the police report, Defendant, Pamela Reed steered left into the center lane to avoid the large piece of tread in her travel lane. She then tried to return to the lane in which she was previous traveling, steering back to the right. Ms. Reed's vehicle began to rotate clockwise and travel in a north easterly direction toward the guide rail. Ms. Reed tried to steer to the left to avoid striking the metal guide rail but was unable to control her vehicle and it began to rotate counter clockwise. The right rear of the vehicle struck the metal guide rail overturning onto its right side. The vehicle then slid in a northerly direction back into the northbound travel lanes. When the vehicle overturned, Plaintiffs, Shanika Brown and her daughter Asorie, were partially ejected out of the sliding door window. The partial ejection resulted in, among other things, Asorie's leg being severed and in Shanika's arm being severed. Ms. Reed's vehicle slid to its final rest approximately 595 feet from the tire tread in the road. During the accident sequence, the Reed vehicle caught fire which was extinguished by a bystander.

19. Upon information and belief, the left rear tire had been retreaded by the McCarthy Defendants in their capacity as an authorized Bandag franchise dealer of the BATO Defendants.

20. Upon information and belief, the individuals that performed the retread were trained by the BATO Defendants, were provided with the equipment used to perform the retread from the BATO Defendants, were provided with the material used to perform the retread from the BATO Defendants, and were the actual and/or ostensible agents of the BATO Defendants. In sum, the BATO Defendants significantly controlled the means and methods of the retreading of the subject tire.

**COUNT I**  
**NEGLIGENCE AGAINST THE SILVI DEFENDANTS**

21. Plaintiff incorporates by reference all above Paragraphs as though the same were set forth herein at length.

22. At all times relevant hereto, the Silvi Defendants acted by and through their agents, workmen, servants and/or employees, acting in the course and scope of their employment, including but not limited to, the driver of the subject vehicle, David Barrientos.

23. The Silvi Defendants breached numerous duties, and were negligent and/or careless in the manner in which they maintained, inspected, operated and/or repaired the subject 2010 Oshkosh cement truck, and were negligent and/or careless in other respects, including but not limited to, the following:

- (a) Failing to properly inspect all of the tires on the subject truck, including the rear tires, both prior to starting the trip and also failing to monitor the tires during the course of the trip(s) that day;
- (b) Failing to remove the subject tire from service after the discovery of a foreign object in the tire which punctured all three belts and the innerliner;

- (c) Failing to properly assess and/or determine whether any of the tires, including the rear tires, exhibited signs of imminent tire failure, including circumferential tread detachment;
- (d) Failing to properly determine and recommend that the rear tire(s) on the subject vehicle be replaced;
- (e) Failing to adequately or properly train or supervise their employees, agents, ostensible agents, and staff personnel, which resulted in a negligent inspection and/or repair of the subject 2010 Oshkosh cement truck and the rear tires and the resultant failure to determine that a rear tire was at risk of imminent failure;
- (f) Failing to remove the subject tire from service, or in the alternative, failing to properly repair the subject tire;
- (g) Failing to understand, by law and regulation, the subject tire was not fit for retread, or, in the alternative, failing to retread the tire;
- (h) Improper installation of the subject tire so as to prevent damage to the structure of the tire, including but not limited to the tire bead, carcass, and sidewall;
- (i) Failure to select and install proper tire fitment for the subject truck; and
- (j) Negligent hiring and/or training in that while acting within the scope of his job duties, employee David Barrientos, as well as other employees, failed to inspect, monitor and/or observe the pending failure of the subject tire, the failure of which endangered the motoring public and was a contributory cause to the injuries suffered by Plaintiffs in the ensuing accident.
- (k) Failing to properly maintain, inspect, and/or repair the subject tire;

24. At all times, the Silvi Defendants, their agents, servants, workers and employees were aware there was a danger of tread separation of retread tires including the truck being operated on the day in question.

25. The negligence and/or carelessness of the Silvi Defendants, as described above, directly and proximately caused the catastrophic injuries suffered by Plaintiffs, Shanika Brown and her minor child, Asorie Brown, in that it or they directly and in natural and continuous

sequence produced, contributed substantially or enhanced Plaintiffs' injuries.

26. As a direct result of the negligence and carelessness of the Silvi Defendants, Plaintiffs, Shanika Brown and her minor child, Asorie Brown, were violently thrown about and partially ejected from the vehicle with great force resulting in severe and substantial injuries to their bodies and limbs, including, but not limited to, traumatic amputations, scarring, and injury to their shoulders and arms, legs, bones, discs, muscles, tendons, tissues and ligaments, and to their nerves and nervous system, resulting in serious orthopedic and neurologic injuries and/or acute anxiety reaction, and depression, some or all of which may be permanent in nature.

27. As a direct result of the negligence and carelessness of the Silvi Defendants, the Plaintiffs have undergone in the past and will undergo in the future extreme pain, aches, anguish, suffering, mental anxiety, disability, impairment, humiliation, embarrassment, disfigurement and loss of life's pleasure, along with a severe shock to their nerves and nervous systems, together with internal injuries of an unknown nature and other injuries the full extent of which is not yet known.

28. As a direct result of the negligence and carelessness of the Silvi Defendants, the Plaintiffs have incurred necessary medical bills, hospital bills and other treatment expenses, the reasonable value of which is in excess of the minimum set forth in the applicable motor vehicle statutes, some or all of which may be recoverable in the instant action.

29. As a direct result of the negligence and carelessness of the Silvi Defendants, the Plaintiffs have suffered severe pain and suffering, which has prevented them in past and will prevent them in the future from attending to and performing all or substantially all of their normal and usual duties, activities, and occupations, and have suffered and will in the future continue to suffer severe loss of earnings and/or impairment of earning capacity, all to their great detriment and loss, which losses are recoverable in this action.

30. As a direct result of the negligence and carelessness of the Silvi Defendants, the Plaintiffs have in the past and will in the future sustain other financial and/or pecuniary losses and expenses, damages, including but not limited to economic damages, non-economic damages to which they are entitled.

31. At all times relevant hereto, Plaintiffs were bound, either by way of election or having been so deemed under the Pennsylvania Motor Vehicle Financial Responsibility Law, by the full tort option and possesses an unfettered right to pursue non-economic damages.

32. As a result of the Silvi Defendants' negligence and carelessness, Plaintiffs have sustained serious impairment to a body function or functions and are entitled to be compensated for both economic and non-economic losses suffered in this matter.

33. The actions of the Silvi Defendants, as set forth above, constitute willful and wanton misconduct in disregard of the rights and safety of Plaintiffs, Shanika Brown and her minor daughter Asorie Brown and warrant the imposition of punitive damages against the Silvi Defendants. Specifically, Defendants and their employees were aware that there was a danger of tread separation on retread tires. Despite this knowledge and with the understanding that it was only a question of when the retreaded tire would separate, and not if, the Defendants and their employees willfully and wantonly, and in extreme and reckless disregard for the safety of those lawfully on public roadways, such as plaintiffs herein, used, placed, purchased, maintained, repaired, manufactured, and/or otherwise selected retread tires for use on the subject concrete truck.

WHEREFORE, Plaintiffs, Shanika Brown, individually and as Parent and Natural Guardian of her minor child, Asorie Brown, demand judgment against Defendants, jointly and severally, in their favor for compensatory damages, for a sum in excess of \$50,000, along with



costs and damages for delay in accordance with Pa.R.C.P. 238, punitive damages, attorney's fees, interest, and other relief the Court may deem appropriate and for trial by jury on all issues so triable as a matter of right.

**COUNT II**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**  
**AGAINST THE SILVI DEFENDANTS**

34. Plaintiff incorporates by reference all above Paragraphs as though the same were set forth herein at length.

35. The Silvi Defendants were negligent in that through their actions, Plaintiff, Shanika Brown suffered pain and emotional distress caused by witnessing the amputation of her infant daughter's leg.

36. Her daughter, Asorie, was removed from the accident scene by good Samaritans and transported to the hospital and, for a substantial period of time, Plaintiff, Shanika Brown, did not know if Asorie's injuries were fatal or not.

37. The Silvi Defendants were negligent in that through their actions, Plaintiff, Shanika Brown, suffered pain and emotional distress on her own behalf when her arm was amputated in the accident.

38. Plaintiff, Shanika Brown's injuries were so severe as to be life threatening as were those of her infant daughter, Asorie.

39. The actions of the Defendants, as set forth above, constitute willful and wanton misconduct in disregard of the rights and safety of Shanika Brown and her minor daughter Asorie Brown and warrant the imposition of punitive damages against the Silvi Defendants. Specifically, Defendants and their employees were aware that there was a danger of tread

separation on retread tires. Despite this knowledge and with the understanding that it was only a question of when the retreaded tire would separate, and not if, the Defendants and their employees willfully and wantonly, and in extreme and reckless disregard for the safety of those lawfully on public roadways, such as plaintiffs herein, used, placed, purchased, maintained, repaired, manufactured, and/or otherwise selected retread tires for use on the subject concrete truck.

WHEREFORE, Plaintiffs, Shanika Brown, individually and as Parent and Natural Guardian of her minor child, Asorie Brown, demand judgment against Defendants, jointly and severally, in their favor for compensatory damages, for a sum in excess of \$50,000, along with costs and damages for delay in accordance with Pa.R.C.P. 238, punitive damages, attorney's fees, interest, and other relief the Court may deem appropriate and for trial by jury on all issues so triable as a matter of right.

**COUNT III**  
**NEGLIGENCE AGAINST THE BATO DEFENDANTS**

40. Plaintiff incorporates by reference all above Paragraphs as though the same were set forth herein at length.

41. The subject tire was a commercial truck tire that was capable of being retreaded.

42. Prior to the tread separation described above, the Oshkosh cement truck was being operated in a reasonably foreseeable manner and within the design parameters of the tire.

43. The subject tire was retread pursuant to a joint venture between Defendant Bandag and Defendant McCarthy Tire. Defendant Bandag contracted with Defendant McCarthy Tire, a Pennsylvania corporation, to create a joint venture between the two parties. Defendant Bandage does not perform retreading services for any individual or company. Rather, the retreading process (the "Bandage system") is licensed for use by Defendant Bandag to third party service

providers, such as Defendant McCarthy Tire.

44. The entirety of the Bandag system, including rubber materials, tools, curing machines, and employee training, is created and provided by Defendant Bandag. This creates a joint venture between Defendant Bandag and its third party service providers, such as the one between Defendant Bandag and Defendant McCarthy Tire. The joint venture at issue herein resulted in the retread of the subject tire and its subsequent failure in the accident underlying this matter.

45. Plaintiffs allege the Bandag process licensed to Defendant McCarthy Tire to be defective in that it does not provide for sufficient protection against subsequent tire failure via belt/tread separation. The Bandag process is defective in that the cure temperature used during the retreading process is too high, which results in the accelerated degradation of the skim rubber components and ultimate premature failure of the belt/tread/carcass system. Further, the Bandag process is defective in that does not provide for adequate inspection of the tire before and after the retreading process. This results in the retread of tires which should not be retread and/or placed back into service. Before additional discovery can be conducted and for the purposes of this complaint, it is for these reasons that Plaintiffs allege the Bandag process as performed by McCarthy Tire is defective.

46. At all times relevant hereto, the BATO Defendants were engaged in the design, manufacture, testing, assembling, selling, monitoring and distribution of tires, including the subject tire in this case, as well as the Bandag retreading process that occurred to the subject tire which was performed by the McCarthy Defendants pursuant to a Bandag franchise agreement with the BATO Defendants and other agreements with the BATO Defendants, including joint venture agreements. In so doing, the BATO Defendants significantly controlled the materials, processes,

means, and methods, by which the retread occurred.

47. Plaintiffs, Shanika Brown and Asorie Brown's injuries and damages were caused by the negligence the BATO Defendants generally, which consisted of, but is not limited to, the following:

- (a) Failing to utilize proper designs or procedures for the manufacture, assembly, and sale of the tire;
- (b) Failing to design the tire to be safe for the use intended;
- (c) Failing to properly test the tire design, and its manufacturing and assembly process prior to manufacture and sale;
- (e) Failing to supervise the tire's manufacturing process and to have in place adequate, effective and proper quality control procedures;
- (f) Utilizing substandard materials and production methods in manufacturing the tire;
- (g) Failing to adequately inform and/or warn purchasers or ultimate users of the tire of the dangers to the motoring public of a tread separation;
- (h) Failing to recall and/or remove the tire from the marketplace;
- (i) Failing to provide training and instruction to those who the BATO Defendants knew, or in the exercise of reasonable care should have known, would be operating vehicles equipped with the tire;
- (j) Failing to re-design the tire so that its tread would not separate;
- (k) Failing to issue service bulletins to their dealers and Bandag franchise dealers (including the McCarthy Defendants) identifying the tire's propensity for failure due to tread separation.
- (l) Failing to provide adequate training to their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants) insofar as the proper manner to retread tires, including the subject tire;
- (m) Failing to provide proper retreading equipment and retreading materials to their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants) that would have allowed tires, including the subject tire, to be retreaded in a manner that rendered the tires

safe;

- (n) Failing to provide proper oversight and supervision to their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants) so as to timely correct dangerous errors in retreading tires, including the subject tire, thereby protecting the public including Plaintiffs;
- (o) Failing to ensure that their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants) were using safe and proper materials whenever retreading tires, including the subject tire;
- (p) Failing to revoke the Bandag franchise agreement with the McCarthy Defendants when the BATO Defendants were or should have been on notice that the McCarthy Defendants were retreading tires in a negligent and dangerous manner;
- (q) Failing to properly instruct, train, and otherwise ensure that their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants) would understand, by law and regulation, the subject tire was not fit for retread, or in the alternative was not properly retreaded;
- (r) Failing to properly notify their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants) that the subject tire should be recalled and/or removed from the marketplace pursuant to its propensity for failure due to tread separation;
- (s) Failing, through the acts and omissions of their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants) to properly install the subject tire so as to prevent damage to the structure of the tire, including but not limited to the tire bead, carcass, and sidewall;
- (t) Vicarious liability for the negligent acts and omissions of their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants);
- (u) Failing, through the acts and omissions of their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants) to properly provide training and instruction to those who the BATO Defendants knew, or in the exercise of reasonable care should have known, would be operating vehicles equipped with the tire; and
- (v) Failing, through the acts and omissions of their agents, ostensible agents,

and Bandag franchise dealers (including but not limited to the McCarthy Defendants) to warn individuals and entities that would ultimately come into contact or in close proximity to the subject tire that it represented a hazard due to the likelihood of tread separation.

48. The BATO Defendants placed the defective subject tire into the stream of commerce and expected or could reasonably foresee the use of the tire in the condition in which the subject tire was designed, manufactured and sold.

49. Furthermore, the BATO Defendants, through their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants) placed the defective subject tire back into the stream of commerce after it was retreaded.

50. As a result of the negligence and carelessness of the BATO Defendants, Plaintiffs Shanika Brown and Asorie Brown, sustained severe, permanent, painful and life-altering injuries alleged herein.

51. As a direct result of the negligence and carelessness of the BATO Defendants, the Plaintiffs, Shanika Brown and her minor child, Asorie Brown, were violently thrown about and partially ejected from the vehicle with great force resulting in severe and substantial injuries to their bodies and limbs, including, but not limited to, traumatic amputations, scarring, and injury to their shoulders and arms, legs, bones, discs, muscles, tendons, tissues and ligaments, and to their nerves and nervous system, resulting in serious orthopedic and neurologic injuries and/or acute anxiety reaction, and depression, some or all of which may be permanent in nature.

52. As a direct result of the negligence and carelessness of the BATO Defendants, the Plaintiffs have undergone in the past and will undergo in the future extreme pain, aches, anguish, suffering, mental anxiety, disability, impairment, humiliation, embarrassment, disfigurement and loss of life's pleasure, along with a severe shock to their nerves and nervous system, together with internal injuries of an unknown nature and other injuries the full extent of

which is not yet known.

53. As a direct result of the negligence and carelessness of the BATO Defendants, the Plaintiffs have incurred necessary medical bills, hospital bills and other treatment expenses, the reasonable value of which is in excess of the minimum set forth in the applicable motor vehicle statutes, some or all of which is recoverable in the instant action.

54. As a direct result of the negligence and carelessness of the BATO Defendants, the Plaintiffs have suffered severe pain and suffering, which has prevented them in past and will prevent them in the future from attending to and performing all or substantially all of their normal and usual duties, activities, and occupations, and have suffered and will in the future continue to suffer severe loss of their earnings and/or impairment of earning capacity, all to their great detriment and loss, which losses are recoverable in this action.

55. As a direct result of the negligence and carelessness of the BATO Defendants, the Plaintiffs have in the past and will in the future sustain other financial and/or pecuniary losses and expenses, damages, including but not limited to economic damages, non-economic damages to which they are entitled.

56. At all times relevant hereto, Plaintiffs were bound, either by way of election or having been so deemed under the Pennsylvania Motor Vehicle Financial Responsibility Law, by the full tort option and possesses an unfettered right to pursue non-economic damages.

57. As a result of BATO Defendants' negligence and carelessness, Plaintiffs have sustained serious impairment to a body function or functions and are entitled to be compensated for both economic and non-economic losses suffered in this matter.

58. The actions of the BATO Defendants, as set forth above, constitute willful and wanton misconduct in disregard of the rights and safety of Plaintiffs, Shanika Brown and her

minor daughter Asorie Brown, and warrant the imposition of punitive damages against the said Defendants. Specifically, the BATO Defendants and their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants) were or should have been aware that there was a danger of tread separation on retread tires. Despite this knowledge and with the understanding that it was only a question of when the retreaded tire would separate, and not if, the BATO Defendants and their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants) willfully and wantonly, and in extreme and reckless disregard for the safety of those lawfully on public roadways, such as plaintiffs herein, used, placed, purchased, maintained, repaired, retreaded, manufactured, and/or otherwise selected retread tires for use on the subject concrete truck.

WHEREFORE, Plaintiffs, Shanika Brown, individually and as Parent and Natural Guardian of her minor child, Asorie Brown, demand judgment against Defendants, jointly and severally, in their favor for compensatory damages, for a sum in excess of \$50,000, along with costs and damages for delay in accordance with Pa.R.C.P. 238, punitive damages, attorney's fees, interest, and other relief the Court may deem appropriate and for trial by jury on all issues so triable as a matter of right.

**COUNT IV**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST THE BATO**  
**DEFENDANTS**

59. Plaintiffs incorporate by reference all above Paragraphs as though the same were set forth herein at length.

60. The BATO Defendants were negligent in that through their actions and through the actions of their agents, ostensible agents, and Bandag franchise dealers (including but not limited



to the McCarthy Defendants), Plaintiff, Shanika Brown suffered pain and emotional distress caused by witnessing the amputation of her infant daughter's leg.

61. Her daughter, Asorie, was removed from the accident scene by good Samaritans and transported to the hospital and, for a substantial period of time, Plaintiff, Shanika Brown did not know if Asorie's injuries were fatal or not.

62. The BATO Defendants were negligent in that through their actions, Plaintiff, Shanika Brown suffered pain and emotional distress on her own behalf when her arm was amputated in the accident.

63. Plaintiff, Shanika Brown's injuries were so severe as to be life threatening as were those of her infant daughter, Asorie.

64. The actions of the BATO Defendants, as set forth above, constitute willful and wanton misconduct in disregard of the rights and safety of Shanika Brown and her minor daughter Asorie Brown and warrant the imposition of punitive damages against Defendant. Specifically, the BATO Defendants and their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants) were or should have been aware that there was a danger of tread separation on retread tires. Despite this knowledge and with the understanding that it was only a question of when the retreaded tire would separate, and not if, the BATO Defendants and their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants) willfully and wantonly, and in extreme and reckless disregard for the safety of those lawfully on public roadways, such as Plaintiffs herein, designed, manufactured, and retreaded the subject tire that rendered it defective and unreasonably dangerous.

WHEREFORE, Plaintiffs, Shanika Brown, individually and as Parent and Natural

Guardian of her minor child, Asorie Brown, demand judgment against Defendants, jointly and severally, in their favor for compensatory damages, for a sum in excess of \$50,000, along with costs and damages for delay in accordance with Pa.R.C.P. 238, punitive damages, attorney's fees, interest, and other relief the Court may deem appropriate and for trial by jury on all issues so triable as a matter of right.

**COUNT V**  
**PRODUCTS LIABILITY (STRICT LIABILITY) AGAINST**  
**THE BATO DEFENDANTS**

65. Plaintiffs incorporate by reference all of the preceding paragraphs as though the same were set forth herein at length.

66. The BATO Defendants designed, manufactured, assembled and/or sold the subject tire.

67. Moreover, the BATO Defendants, via their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants) were responsible for retreading the subject tire and represented to the public that the subject tire, once retreaded, was, in essence, a new product.

68. The BATO Defendants designed, manufactured, assembled, retreaded, and/or sold the tire in the regular course and scope of their business, including business conducted through their agents, ostensible agents, and Bandag franchise dealers (including, but not limited to the McCarthy Defendants).

69. The subject tire, both when initially sold and placed in the stream of commerce and thereafter when retreaded and reintroduced into the stream of commerce, was expected to perform

as it was designed to perform.

70. At the time the BATO Defendants initially sold the tire it was in a dangerous and defective condition because of its unsafe and improper design, manufacture, construction and assembly.

71. At the time the BATO Defendants, acting through their agents, ostensible agents, and Bandag franchise dealers (including, but not limited to the McCarthy Defendants), reintroduced the retreaded tire to the general public it was in a dangerous and defective condition because of its unsafe and improper design, manufacture, construction and assembly.

72. The subject tire's defects were causes of the injuries and damages sustained by Plaintiffs, Shanika Brown and Asorie Brown.

73. The subject tire was defective pursuant to consumer expectations.

74. Moreover, the subject tire was defective pursuant to a risk-utility analysis.

75. The BATO Defendants, at all times relevant hereto, designed, assembled, manufactured, retreaded, inspected, tested, sold and marketed tires for use by the public.

76. The BATO Defendants knew or reasonably should have known the dangers inherent in defectively designed tires, defectively manufactured tires, and defectively retreaded tires, and the associated risk of injury or death posed by said defective tires, including but not limited to the subject tire.

77. The BATO Defendants owed a duty to consumers as well as members of the general public who would reasonably come into close proximity of its tires, including the subject tire, to design, manufacture, assemble, retread, test, market and distribute said tires in a manner and condition that would be safe and merchantable.

78. The BATO Defendants are strictly liable to the Plaintiffs for the injuries that

Plaintiffs, Shanika Brown and her minor daughter Asorie Brown, have suffered.

79. As a direct result of the strict liability of the BATO Defendants, the Plaintiffs, Shanika Brown and her minor child, Asorie Brown, were violently thrown about and partially ejected from the vehicle with great force resulting in severe and substantial injuries to their bodies and limbs, including, but not limited to, traumatic amputations, scarring, and injury to their shoulders and arms, legs, bones, discs, muscles, tendons, tissues and ligaments, and to their nerves and nervous system, resulting in serious orthopedic and neurologic injuries and or acute anxiety reaction, and depression, some or all of which may be permanent in nature.

80. As a direct result of the strict liability of the BATO Defendants, the Plaintiffs have undergone in the past and will undergo in the future, extreme pain, aches, anguish, suffering, mental anxiety, disability, impairment, humiliation, embarrassment, disfigurement and loss of life's pleasure, along with a severe shock to their nerves and nervous systems, together with internal injuries of an unknown nature and other injuries the full extent of which is not yet known.

81. As a direct result of the strict liability of the BATO Defendants, the Plaintiffs have incurred necessary medical bills, hospital bills and other treatment expenses, the reasonable value of which is in excess of the minimum set forth in the applicable motor vehicle statutes, some or all of which may be recoverable in the instant action.

82. As a direct result of the strict liability of the BATO Defendants, the Plaintiffs have suffered severe pain and suffering, which has prevented them in past and will prevent them in the future from attending to and performing all or substantially all of their normal and usual duties, activities, and occupations, and have suffered and will in the future continue to suffer severe loss and/or impairment of their earnings and/or earning capacity, all to their great detriment and loss, which losses are recoverable in this action.

83. As a direct result of the strict liability of the BATO Defendants, the Plaintiffs have in the past and will in the future sustain other financial and/or pecuniary losses and expenses, damages, including but not limited to economic damages, non-economic damages to which they are entitled.

84. At all times relevant hereto, Plaintiffs were bound, either by way of election or having been so deemed under the Pennsylvania Motor Vehicle Financial Responsibility Law, by the full tort option and possesses an unfettered right to pursue non-economic damages.

85. As a result of BATO Defendants' strict liability, Plaintiffs have sustained serious impairment to a body function or functions and are entitled to be compensated for both economic and non-economic losses suffered in this matter.

86. The actions of the BATO Defendants, as set forth above, constitute willful and wanton misconduct in disregard of the rights and safety of Shanika Brown and her minor daughter Asorie Brown and warrant the imposition of punitive damages against Defendant. Specifically, the BATO Defendants and their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants) were or should have been aware that there was a danger of tread separation on retread tires. Despite this knowledge and with the understanding that it was only a question of when the retreaded tire would separate, and not if, the BATO Defendants and their agents, ostensible agents, and Bandag franchise dealers (including but not limited to the McCarthy Defendants) willfully and wantonly, and in extreme and reckless disregard for the safety of those lawfully on public roadways, such as Plaintiffs herein, designed, manufactured, and retreaded the subject tire that rendered it defective and unreasonably dangerous.

WHEREFORE, Plaintiffs, Shanika Brown, individually and as Parent and Natural

Guardian of her minor child, Asorie Brown, demand judgment against Defendants, jointly and severally, in their favor for compensatory damages, for a sum in excess of \$50,000, along with costs and damages for delay in accordance with Pa.R.C.P. 238, punitive damages, attorney's fees, interest, and other relief the Court may deem appropriate and for trial by jury on all issues so triable as a matter of right.

**COUNT VI**  
**NEGLIGENCE AGAINST THE McCARTHY DEFENDANTS**

87. Plaintiff incorporates by reference all above Paragraphs as though the same were set forth herein at length.

88. At all times relevant hereto, the McCarthy Defendants were engaged in the Bandag retreading process that occurred to the subject tire and did so both in their capacity as agents and employees of the McCarthy Defendants, and also as the agents and/or ostensible agents of the BATO Defendants pursuant to Bandag franchise agreements and other agreements entered into with the BATO Defendants.

89. At all times relevant hereto, the McCarthy Defendants were acting in their capacity as a Bandag franchise dealer, and were doing so with the permission of the BATO Defendants.

90. Plaintiffs, Shanika Brown and Asorie Brown's injuries and damages were caused by the negligence the McCarthy Defendants generally, which consisted of, but is not limited to, the following:

- (a) Failing to properly repair and retread the subject tire;
- (b) Failing to properly inspect the subject tire after it was retreaded;
- (c) Failing to provide adequate training to their employees and agents insofar as the proper manner to retread tires, including the subject tire;

- (d) Failing to provide proper equipment to their employees and agents that would have allowed tires, including the subject tire, to be retreaded in a manner that rendered the tires safe;
- (e) Failing to provide proper oversight and supervision to their employees and agents so as to timely correct dangerous errors in retreading tires, including the subject tire, thereby protecting the public including Plaintiffs;
- (f) Failing to ensure that their employees and agents were using safe and proper materials whenever retreading tires, including the subject tire;
- (g) Failing to revoke the Bandag franchise agreement with the BATO Defendants when the McCarthy Defendants were or should have been on notice that the Bandag retreading process was resulting in tires that were unreasonably dangerous, including the subject tire;
- (h) Failing to properly instruct, train, and otherwise ensure that their employees would understand, by law and regulation, the subject tire was not fit for retread, or in the alternative was not properly retreaded;
- (i) Failing to properly remove the subject tire from service and scrap it pursuant to its propensity for failure due to tread separation;
- (j) Failing to properly install of the subject tire so as to prevent damage to the structure of the tire, including but not limited to the tire bead, carcass, and sidewall;
- (k) Failing to properly provide training and instruction to those who the McCarthy Defendants knew, or in the exercise of reasonable care should have known, would be operating vehicles equipped with the tire; and
- (l) Failing to warn individuals and entities that would ultimately come into contact or in close proximity to the subject tire that it represented a hazard due to the likelihood of tread separation.

91. The McCarthy Defendants placed the defective subject tire, once it was retreaded, into the stream of commerce and expected or could reasonably foresee the use of the tire in that condition.

92. As a result of the negligence and carelessness of the McCarthy Defendants, Plaintiffs Shanika Brown and Asorie Brown, sustained severe, permanent, painful and life-altering

injuries alleged herein.

93. As a direct result of the negligence and carelessness of the McCarthy Defendants, the Plaintiffs, Shanika Brown and her minor child, Asorie Brown, were violently thrown about and partially ejected from the vehicle with great force resulting in severe and substantial injuries to their bodies and limbs, including, but not limited to, traumatic amputations, scarring, and injury to their shoulders and arms, legs, bones, discs, muscles, tendons, tissues and ligaments, and to their nerves and nervous system, resulting in serious orthopedic and neurologic injuries and/or acute anxiety reaction, and depression, some or all of which may be permanent in nature.

94. As a direct result of the negligence and carelessness of the McCarthy Defendants, the Plaintiffs have undergone in the past and will undergo in the future extreme pain, aches, anguish, suffering, mental anxiety, disability, impairment, humiliation, embarrassment, disfigurement and loss of life's pleasure, along with a severe shock to their nerves and nervous system, together with internal injuries of an unknown nature and other injuries the full extent of which is not yet known.

95. As a direct result of the negligence and carelessness of the McCarthy Defendants, the Plaintiffs have incurred necessary medical bills, hospital bills and other treatment expenses, the reasonable value of which is in excess of the minimum set forth in the applicable motor vehicle statutes, some or all of which is recoverable in the instant action.

96. As a direct result of the negligence and carelessness of the McCarthy Defendants, the Plaintiffs have suffered severe pain and suffering, which has prevented them in past and will prevent them in the future from attending to and performing all or substantially all of their normal and usual duties, activities, and occupations, and have suffered and will in the future continue to suffer severe loss of their earnings and/or impairment of earning capacity, all to their great



detriment and loss, which losses are recoverable in this action.

97. As a direct result of the negligence and carelessness of the McCarthy Defendants, the Plaintiffs have in the past and will in the future sustain other financial and/or pecuniary losses and expenses, damages, including but not limited to economic damages, non-economic damages to which they are entitled.

98. At all times relevant hereto, Plaintiffs were bound, either by way of election or having been so deemed under the Pennsylvania Motor Vehicle Financial Responsibility Law, by the full tort option and possesses an unfettered right to pursue non-economic damages.

99. As a result of the McCarthy Defendants' negligence and carelessness, Plaintiffs have sustained serious impairment to a body function or functions and are entitled to be compensated for both economic and non-economic losses suffered in this matter.

WHEREFORE, Plaintiffs, Shanika Brown, individually and as Parent and Natural Guardian of her minor child, Asorie Brown, demand judgment against Defendants, jointly and severally, in their favor for compensatory damages, for a sum in excess of \$50,000, along with costs and damages for delay in accordance with Pa.R.C.P. 238, attorney's fees, interest, and other relief the Court may deem appropriate and for trial by jury on all issues so triable as a matter of right.

**COUNT VII**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST**  
**THE McCARTHY DEFENDANTS**

100. Plaintiffs incorporate by reference all above Paragraphs as though the same were set forth herein at length.

101. The McCarthy Defendants were negligent in that through their actions (which

were, at all material times, also conducted in their capacity as agents and/or ostensible agents of the BATO Defendants and in conformance with Bandag franchise agreements and other contracts with the BATO Defendants, including joint venture agreements) Plaintiff, Shanika Brown suffered pain and emotional distress caused by witnessing the amputation of her infant daughter's leg.

102. Her daughter, Asorie, was removed from the accident scene by good Samaritans and transported to the hospital and, for a substantial period of time, Plaintiff, Shanika Brown did not know if Asorie's injuries were fatal or not.

103. The McCarthy Defendants were negligent in that through their actions, Plaintiff, Shanika Brown suffered pain and emotional distress on her own behalf when her arm was amputated in the accident.

104. Plaintiff, Shanika Brown's injuries were so severe as to be life threatening as were those of her infant daughter, Asorie.

WHEREFORE, Plaintiffs, Shanika Brown, individually and as Parent and Natural Guardian of her minor child, Asorie Brown, demand judgment against Defendants, jointly and severally, in their favor for compensatory damages, for a sum in excess of \$50,000, along with costs and damages for delay in accordance with Pa.R.C.P. 238, attorney's fees, interest, and other relief the Court may deem appropriate and for trial by jury on all issues so triable as a matter of right.

**COUNT VIII**  
**PRODUCTS LIABILITY (STRICT LIABILITY) AGAINST**  
**THE McCARTHY DEFENDANTS**

105. Plaintiffs incorporate by reference all of the preceding paragraphs as though the same were set forth herein at length.

106. The McCarthy Defendants, acting as the ostensible agents of the BATO Defendants and pursuant to both Bandag franchise agreements and other contracts entered into with the BATO Defendants, retreaded the subject tire and represented to the public that the subject tire, once retreaded, was, in essence, a new product.

107. The McCarthy Defendants designed, manufactured, assembled, retreaded, and/or the tire in the regular course and scope of their business, including business conducted through their agents, ostensible agents, and Bandag franchise dealers (including, but not limited to the McCarthy Defendants).

108. The subject tire, when retreaded and reintroduced into the stream of commerce by the McCarthy Defendants, was expected to perform as it was designed to perform.

109. At the time the McCarthy Defendants reintroduced the subject tire it was in a dangerous and defective condition because of its unsafe and improper design, manufacture, construction and assembly.

110. At the time the McCarthy Defendants reintroduced the retreaded tire to the general public it was in a dangerous and defective condition because of its unsafe and improper design, manufacture, construction and assembly.

111. The subject tire's defects were causes of the injuries and damages sustained by Plaintiffs, Shanika Brown and Asorie Brown.

112. The subject tire was defective pursuant to consumer expectations.

113. Moreover, the subject tire was defective pursuant to a risk-utility analysis.

114. The McCarthy Defendants, at all times relevant hereto, retreaded, inspected, tested, sold and marketed tires for use by the public, including the subject tire.

115. The McCarthy Defendants knew or reasonably should have known the dangers

inherent in defectively designed tires, defectively manufactured tires, and defectively retreaded tires, and the associated risk of injury or death posed by said defective tires, including but not limited to the subject tire.

116. The McCarthy Defendants owed a duty to consumers as well as members of the general public who would reasonably come into close proximity of its tires, including the subject tire, to retread, test, market and distribute said tires in a manner and condition that would be safe and merchantable.

117. The McCarthy Defendants are strictly liable to the Plaintiffs for the injuries that Plaintiffs, Shanika Brown and her minor daughter Asorie Brown, have suffered.

118. As a direct result of the strict liability of the McCarthy Defendants, the Plaintiffs, Shanika Brown and her minor child, Asorie Brown, were violently thrown about and partially ejected from the vehicle with great force resulting in severe and substantial injuries to their bodies and limbs, including, but not limited to, traumatic amputations, scarring, and injury to their shoulders and arms, legs, bones, discs, muscles, tendons, tissues and ligaments, and to their nerves and nervous system, resulting in serious orthopedic and neurologic injuries and or acute anxiety reaction, and depression, some or all of which may be permanent in nature.

119. As a direct result of the strict liability of the McCarthy Defendants, the Plaintiffs have undergone in the past and will undergo in the future, extreme pain, aches, anguish, suffering, mental anxiety, disability, impairment, humiliation, embarrassment, disfigurement and loss of life's pleasure, along with a severe shock to their nerves and nervous systems, together with internal injuries of an unknown nature and other injuries the full extent of which is not yet known.

120. As a direct result of the strict liability of the McCarthy Defendants, the Plaintiffs have incurred necessary medical bills, hospital bills and other treatment expenses, the reasonable

value of which is in excess of the minimum set forth in the applicable motor vehicle statutes, some or all of which may be recoverable in the instant action.

121. As a direct result of the strict liability of the McCarthy Defendants, the Plaintiffs have suffered severe pain and suffering, which has prevented them in past and will prevent them in the future from attending to and performing all or substantially all of their normal and usual duties, activities, and occupations, and have suffered and will in the future continue to suffer severe loss and/or impairment of their earnings and/or earning capacity, all to their great detriment and loss, which losses are recoverable in this action.

122. As a direct result of the strict liability of the McCarthy Defendants, the Plaintiffs have in the past and will in the future sustain other financial and/or pecuniary losses and expenses, damages, including but not limited to economic damages, non-economic damages to which they are entitled.

123. At all times relevant hereto, Plaintiffs were bound, either by way of election or having been so deemed under the Pennsylvania Motor Vehicle Financial Responsibility Law, by the full tort option and possesses an unfettered right to pursue non-economic damages.

124. As a result of McCarthy Defendants' strict liability, Plaintiffs have sustained serious impairment to a body function or functions and are entitled to be compensated for both economic and non-economic losses suffered in this matter.

WHEREFORE, Plaintiffs, Shanika Brown, individually and as Parent and Natural Guardian of her minor child, Asorie Brown, demand judgment against Defendants, jointly and severally, in their favor for compensatory damages, for a sum in excess of \$50,000, along with costs and damages for delay in accordance with Pa.R.C.P. 238, attorney's fees, interest, and other relief the Court may deem appropriate and for trial by jury on all issues so triable as a matter of

right.

**COUNT IX**  
**NEGLIGENCE AGAINST PAMELA B. REED**

125. Plaintiffs incorporate by reference the preceding paragraphs as though the same were set forth at length.

126. According to information contained in the police report, Defendant, Pamela B. Reed, lost control of her vehicle while trying to avoid the road hazard tread from the subject cement truck.

127. Insofar as the police report indicates that Defendant, Reed's actions may have been an overreaction, it may be argued that she shares some contributory or comparative negligence in causing the subject accident.

128. As a direct and proximate cause of such negligence of Defendant Reed, Plaintiffs, Shanika Brown and her minor daughter Asorie Brown, suffered injuries severe, permanent and life-altering bodily injuries, as heretofore described in this Amended Complaint.

129. As a direct result of the negligence and carelessness of the Defendant, the Plaintiffs, Shanika Brown and her minor child, Asorie Brown, were violently thrown about and partially ejected from the vehicle with great force resulting in severe and substantial injuries to their bodies and limbs, including, but not limited to, traumatic amputations, scarring, and injury to their shoulders and arms, legs, bones, discs, muscles, tendons, tissues and ligaments, and to their nerves and nervous system, resulting in serious orthopedic and neurologic injuries and or acute anxiety reaction, and depression, some or all of which may be permanent in nature.

130. As a direct result of the negligence and carelessness of the Defendant, the Plaintiffs have undergone in the past and will undergo in the future extreme pain, aches, anguish, suffering, mental anxiety, disability, impairment, humiliation, embarrassment, disfigurement and

loss of life's pleasure, along with a severe shock to their nerves and nervous systems, together with internal injuries of an unknown nature and other injuries the full extent of which is not yet known.

131. As a direct result of the negligence and carelessness of the Defendant, the Plaintiffs have incurred necessary medical bills, hospital bills and other treatment expenses, the reasonable value of which is in excess of the minimum set forth in the applicable motor vehicle statutes, some or all of which are recoverable in the instant action.

132. As a direct result of the negligence and carelessness of the Defendant, the Plaintiffs have suffered severe pain and suffering, which has prevented them in past and will prevent them in the future from attending to and performing all or substantially all of their normal and usual duties, activities, and occupations, and have suffered and will in the future continue to suffer severe loss and/or impairment of their earnings and/or earning capacity, all to their great detriment and loss, which losses are recoverable in this action.

133. As a direct result of the negligence and carelessness of the Defendant, the Plaintiffs have in the past and will in the future sustain other financial and/or pecuniary losses and expenses, and damages, including but not limited to economic and non-economic damages, to which they are entitled.

134. At all times relevant hereto, Plaintiffs were bound, either by way of election or having been so deemed under the Pennsylvania Motor Vehicle Financial Responsibility Law, by the full tort option and possesses an unfettered right to pursue non-economic damages.

135. As a result of Defendant negligence and carelessness, Plaintiffs have sustained serious impairment to a body function or functions and are entitled to be compensated for both economic and non-economic losses suffered in this matter.

WHEREFORE, Plaintiffs, Shanika Brown, individually and as Parent and Natural

Guardian of her minor child, Asorie Brown, demand judgment against Defendants in their favor for compensatory damages, for a sum in excess of \$50,000, along with costs and damages for delay in accordance with Pa.R.C.P. 238, attorney's fees, interest, and other relief the Court may deem appropriate and for trial by jury on all issues so triable as a matter of right.

**COUNT X**  
**NEGLIGENT HIRING, TRAINING AND SUPERVISION AGAINST SILVI**

136. Plaintiffs incorporate by reference all of the allegations set forth in the preceding paragraphs as though the same were set forth at length herein.

137. In addition to the previous allegations of negligence and carelessness against the Silvi Defendants, said Defendants acted negligently, carelessly, and recklessly in by acting or failing to act in the following respects:

- (a) Failing to properly train its employees;
- (b) Permitting an incompetent and inexperienced driver to operate its motor vehicle;
- (c) Negligent entrustment of a motor vehicle to be operated in interstate commerce;
- (d) The Silvi defendants are vicariously liable, and/or liable under the theories of *respondeat superior* or agency, for the acts of its agents servants, workmen and employees and is responsible for all acts and/or omissions of its agents, workmen, servants and employees;
- (e) Failure to conduct appropriate background checks and failure to review drivers' abstracts and records of their employees, including, but not limited to the records and abstracts of employee, David Barrientos;
- (f) Failure to train employees, including but not limited to, employee, David Barrientos, of post-accident safety protocols and procedures;
- (g) Failure to train employees, including but not limited to, employee, David Barrientos, of appropriate truck operation and safety procedures when a tire is blown out or when a retread comes off of a tire;



- (h) Hiring, retaining and permitting a commercial driver, employee, David Barrientos, to operate a concrete truck despite possessing a prior driving history record which includes, but is not limited to, nine (9) previous commercial driver's license suspensions and nine (9) previous personal driver's license suspensions, in addition to numerous previous moto vehicle accidents and moving and non-moving violations;
- (i) Failure to properly and adequately train its employees on proper pre-trip and post-trip inspections of their vehicles and trucks;
- (j) Failure to properly and adequately advise, train and supply its employees on the use of safety triangles, safety flares, and on the removal of tire tread debris from a roadway after a blow-out or tire failure;
- (k) Failure to train its employees and staff on inspection of used tires, retreaded tires, and tires and trucks purchased from other companies and/or sellers; and
- (l) Failure to properly and adequately train its employees on protocol when a tire blowout or tire failure may be occurring or may have occurred.

138. As a direct result of the negligence and carelessness of the Silvi Defendants, the Plaintiffs, Shanika Brown and her minor child, Asorie Brown, were violently thrown about and were partially ejected from the vehicle with great force resulting in severe and substantial injuries to their bodies and limbs, including, but not limited to, traumatic amputations, scarring, and injury to their shoulders and arms, legs, bones, discs, muscles, tendons, tissues and ligaments, and to their nerves and nervous system, resulting in serious orthopedic and neurologic injuries and or acute anxiety reaction, and depression, some or all of which may be permanent in nature.

139. As a direct result of the negligence and carelessness of the Silvi Defendants, the Plaintiffs have undergone in the past and will undergo in the future extreme pain, aches, anguish, suffering, mental anxiety, disability, impairment, humiliation, embarrassment, disfigurement and loss of life's pleasure along with a severe shock to their nerves and nervous system, together with internal injures of an unknown nature and other injuries the full extent of

which is not yet known.

140. As a direct result of the negligence and carelessness of the Silvi Defendants, the Plaintiffs have incurred necessary medical, hospital and other treatment expenses, the reasonable value of which is in excess of the minimum set forth in the applicable motor vehicle statutes, some or all of which may be recoverable in the instant action.

141. As a direct result of the negligence and carelessness of the Silvi Defendants, the Plaintiffs have suffered severe pain and suffering, which has prevented them in past and may be prevent them in the future from attending to and performing all or substantially all of their normal and usual duties, activities, and occupations, and has suffered and will in the future continue to suffer severe loss of their earnings and/or impairment of their earnings and/or of earning capacity, all to their great detriment and loss, which losses are recoverable in this action.

142. As a direct result of the negligence and carelessness of the Silvi Defendants, the Plaintiffs have in the past and will in the future sustain other financial and/or pecuniary losses and expenses and damages, including but not limited to economic and non-economic damages, to which they are entitled.

143. At all times relevant hereto, Plaintiffs were bound, either by way of election or having been so deemed under the Pennsylvania Motor Vehicle Financial Responsibility Law, by the full tort option and possesses an unfettered right to pursue non-economic damages.

144. As a result of Silvi Defendants' negligence and carelessness, Plaintiffs have sustained serious impairment to a body function or functions and are entitled to be compensated for both economic and non-economic losses suffered in this matter.

145. The actions of the Silvi Defendants, as set forth above, constitute willful and wanton misconduct in disregard of the rights and safety of Plaintiffs, Shanika Brown and her

minor daughter Asorie Brown, and warrant the imposition of punitive damages against the Silvi Defendants. Specifically, Defendants and their employees were aware that there was a danger of tread separation on retread tires. Despite this knowledge and with the understanding that it was only a question of when the retreaded tire would separate, and not if, the Defendants and their employees willfully and wantonly, and in extreme and reckless disregard for the safety of those lawfully on public roadways, such as plaintiffs herein, used, placed, purchased, maintained, repaired, manufactured, and/or otherwise selected retread tires for use on the subject concrete truck.

WHEREFORE, Plaintiffs, Shanika Brown, individually and as Parent and Natural Guardian of her minor child, Asorie Brown, demand judgment against Defendants in their favor for compensatory damages, for a sum in excess of \$50,000, along with costs and damages for delay in accordance with Pa.R.C.P. 238, punitive damages, attorney's fees, interest, and other relief the Court may deem appropriate and for trial by jury on all issues so triable as a matter of right.

LAW OFFICES OF VINCENT J. CIECKA

By: /s/ Joseph J. Urban

Joseph J. Urban, Esquire  
5709 Westfield Avenue  
Pennsauken, New Jersey 08110

Jurban@ciecka.com

(856)-665-5709

**Attorney for Plaintiffs, Shanika Lakiyah  
Brown, Parent and Natural Guardian  
of Asorie Elizabeth Brown**

Dated: 9/08/16

**VERIFICATION**

I SHANIKA LAKIYAH BROWN, have read the foregoing. The statements herein are correct to the best of my personal knowledge, information and/or belief.

The statement and verification is made subject to the penalties of 18 Pa.S.C.A. Sec. 4904 relating to unsworn falsification to authorities, which provides that if I knowingly make false averments, I may be subject to criminal penalties.

Date: 9-8-16

  
\_\_\_\_\_  
SHANIKA LAKIYAH BROWN

**VERIFICATION**

I SHANIKA LAKIYAH BROWN, Parent and Natural Guardian of Asorie Elizabeth Brown have read the foregoing. The statements herein are correct to the best of my personal knowledge, information and/or belief.

The statement and verification is made subject to the penalties of 18 Pa.S.C.A. Sec. 4904 relating to unsworn falsification to authorities, which provides that if I knowingly make false averments, I may be subject to criminal penalties.

Date: 9-8-16

  
SHANIKA LAKIYAH BROWN,  
Parent And Natural Guardian  
Of Asorie Elizabeth Brown

THE STATE

IN SENATE, January 11, 1907.  
REPORT OF THE COMMISSIONERS OF THE LAND OFFICE,  
IN ANSWER TO A RESOLUTION PASSED BY THE SENATE  
MAY 15, 1906.  
ALBANY: JAMES BROWN, STATE PRINTER, 1907.

ALBANY, N. Y.,  
JANUARY 11, 1907.

1907