

**CIVIL ACTION COVER SHEET**TRIAL COURT OF MASSACHUSETTS  
SUPERIOR COURT DEPARTMENT

DOCKET NO. \_\_\_\_\_

COUNTY **SUFFOLK**

OF

**PLAINTIFF(S)** **Megan Cruz, Barbara Ellerbe,  
Monroe Griffin, Akilah Lindler,  
et al.****DEFENDANT(S)** **Raymond Talmadge d/b/a Calvary  
Coach, Samuel J. Jackson, Prevost  
Car, Inc., TomTom NV, et al.**Type Plaintiff's Attorney name, Address, City/State/Zip  
Phone Number and BBO#Type Defendant's Attorney Name, Address, City/State/Zip  
Phone Number (If Known)Joseph P. Musacchio, BBO #365270, Kreindler & Kreindler LLP  
855 Boylston Street, Boston, MA 02116  
(617) 424-9100**TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)**

CODE NO.

TYPE OF ACTION (specify)

TRACK

IS THIS A JURY CASE?

**B05 Product Liability - Average Track**☒ Yes ☐ No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

**TORT CLAIMS**

(Attach additional sheets as necessary)

**A. Documented medical expenses to date:**

1. Total hospital expenses
2. Total doctor expenses
3. Total chiropractic expenses
4. Total physical therapy expenses
5. Total other expenses (describe)

\$ \$2,000,000  
\$ \$500,000  
\$ TBD  
\$ TBD  
\$ TBD

**Subtotal**

\$ \$2,500,000  
\$ TBD

**B. Documented lost wages and compensation to date****C. Documented property damages to date****D. Reasonably anticipated future medical expenses****E. Reasonably anticipated lost wages and compensation to date****F. Other documented items of damages (describe)**

\$ \$10,000,000  
\$ TBD

**G. Brief description of plaintiff's injury, including nature and extent of injury (describe)**

Plaintiffs suffered severe head, neck and back injuries while passengers on a bus that struck an overpass on Soldier's Field Road in Boston, MA

**Total \$** Over  
\$15,000,000.

**CONTRACT CLAIMS**

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

**TOTAL \$** .....

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record

A.O.S.C. 3-2007

Date: January 23, 2015

**CIVIL ACTION COVER SHEET INSTRUCTIONS**  
**SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE**

**\* CONTRACTS**

**\* REAL PROPERTY**

**MISCELLANEOUS**

|   |   |   |
|---|---|---|
| A01 Services, Labor and Materials F)                      | C01 Land Taking (eminent domain) (F)                | E02 Appeal from Administrative                            |
| A02 Goods Sold and Delivered (F)                          | C02 Zoning Appeal, G.L. c.40A (F)                   | Agency G.L. c. 30A (X)                                    |
| A03 Commercial Paper (F)                                  | C03 Dispute concerning title (F)                    | E03 Claims against Commonwealth or Municipality (A)       |
| A08 Sale or Lease of Real Estate (F)                      | C04 Foreclosure of mortgage (X)                     | E05 Confirmation of Arbitration Awards (X)                |
| A12 Construction Dispute (A)                              | C05 Condominium Lien & Charges (X)                  | E07 G.L. c.112, s.12S (Mary Moe) (X)                      |
| A99 Other (Specify) (F)                                   | C99 Other (Specify) (F)                             | E08 Appointment of Receiver (X)                           |
| E03 Claims against Commonwealth or Municipality (A)       | E03 Claims against Commonwealth or Municipality (A) | E09 General Contractor bond, G.L. c. 149, ss. 29, 29a (A) |
| <b>*TORT</b>  |   |   |
| B03 Motor Vehicle Negligence (F)                          | D01 Specific Performance of Contract (A)            | E11 Worker's Compensation (X)                             |
| B04 Other Negligence- personal injury/property damage (F) | D02 Reach and Apply (F)                             | E12 G.L.c.123A, s.12 (SDP Commitment) (X)                 |
| B05 Products Liability (A)                                | D06 Contribution or Indemnification (F)             | E14 G.L. c. 123A, s. 9 (SDP Petition) (X)                 |
| B06 Malpractice-Medical (A)                               | D07 Imposition of a Trust (A)                       | E15 Abuse Petition, G. L. c. 209A (X)                     |
| B07 Malpractice-Other (Specify) (A)                       | D08 Minority Stockholder's Suit (A)                 | E16 Auto Surcharge Appeal (X)                             |
| B08 Wrongful Death, G.L. c.229, s.2A (A)                  | D10 Accounting (A)                                  | E17 Civil Rights Act, G.L. c.12, s. 11H (A)               |
| B15 Defamation (Libel-Slander) (A)                        | D12 Dissolution of Partnership (F)                  | E18 Foreign Discovery Proceeding (X)                      |
| B19 Asbestos (A)  | D13 Declaratory Judgment G.L. c. 231A (A)           | E19 Sex Offender Registry G.L. c. 178M, s. 6 (X)          |
| B20 Personal Injury- slip & fall (F)                      | D99 Other (Specify) (F)                             | E25 Plural Registry (Asbestos cases) (F)                  |
| B21 Environmental (F)                                     |   | E95 **Forfeiture G.L. c. 94C, s. 47 (F)                   |
| B22 Employment Discrimination (F)                         |   | E96 Prisoner Cases (F)                                    |
| B99 Other (Specify) (F)                                   |   | E97 Prisoner Habeas Corpus (X)                            |
| E03 Claims against Commonwealth (A)                       |   | E99 Other (Specify) (X)                                   |

\*Claims against the Commonwealth or a municipality are type E03, Average Track, cases.

\*\*Claims filed by the Commonwealth pursuant to G L c 94C, s 47 Forfeiture cases are type E95, Fast track.

TRANSFER YOUR SELECTION TO THE FACE SHEET.

EXAMPLE:

| CODE NO. | TYPE OF ACTION (SPECIFY)                 | TRACK | IS THIS A JURY CASE? |
|----------|--|-------|----------------------|
| B03      | Motor Vehicle Negligence-Personal Injury | (F)   | [ X ] Yes [ ]        |

**SUPERIOR COURT RULE 29**

**DUTY OF THE PLAINTIFF.** The plaintiff or his/her counsel shall set forth, on the face sheet (or attach additional sheets as necessary), a statement specifying in full and itemized detail the facts upon which the plaintiff then relies as constituting money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served on the defendant together with the complaint. If a statement of money damages, where appropriate is not filed, the Clerk-Magistrate shall transfer the action as provided in Rule 29(5)(C).

**DUTY OF THE DEFENDANT.** Should the defendant believe the statement of damages filed by the plaintiff in any respect inadequate, he or his counsel may file with the answer a statement specifying in reasonable detail the potential damages which may result should the plaintiff prevail. Such statement, if any, shall be served with the answer.

A CIVIL ACTION COVER SHEET MUST BE FILED WITH EACH COMPLAINT.

FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY  
MAY RESULT IN DISMISSAL OF THIS ACTION.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL NO.

15-0222 G

MEGAN CRUZ, as legal guardian of )  
person and estate of, MATTHEW CRUZ, )  
an Incapacitated Person, )  
and )  
BARBARA ELLERBE, )  
as parent and natural guardian of )  
JAANAI HOLDEN, a minor )  
and )  
MONROE GRIFFIN )  
and )  
AKILAH LINDLER )  
and )  
SIERRA MCSEED )  
and )  
DANLADI MCSEED )  
and )  
MA'ISHA O. CULBRETH )  
and )  
MIRANDA M. MOWERY )  
and )  
SUZANNE MURPHY )  
and )



COPY

**LABRIYAH D. RYLES**

**and**

**IRIS LYNN SYKES**

**Plaintiffs**

**v.**

**RAYMOND TALMADGE D/B/A  
CALVARY COACH, SAMUEL J.  
JACKSON, PREVOST CAR, INC.,  
PREVOST CAR (US), INC., VOLVO  
GROUP NORTH AMERICA,  
TOMTOM NV, TOMTOM USA,  
GARMIN INTERNATIONAL, INC.,  
GARMIN NORTH AMERICA, INC.,  
GARMIN USA, INC. and THE  
COMMONWEALTH OF  
MASSACHUSETTS DEPARTMENT  
OF CONSERVATION AND  
RECREATION,**

**Defendants**

**COMPLAINT**

**and**

**JURY TRIAL DEMANDED**

### **COMPLAINT**

AND NOW, comes the above listed Plaintiffs, by and through their attorneys, Kreindler & Kreindler, LLP, and hereby avers as follows in their Complaint against the above referenced Defendants:



### **THE PARTIES**

1. Plaintiff MEGAN CRUZ, was appointed legal guardian of the person and estate of MATTHEW CRUZ, an incapacitated person, by the Court of Common Pleas of Bucks County, Pennsylvania, Orphans' Court Division, on December 24, 2014.

2. Plaintiff MEGAN CRUZ and incapacitated Plaintiff MATTHEW CRUZ are adult individuals currently residing at 1060 Avenue C, Langhorne, PA 19047. Incapacitated Plaintiff MATTHEW CRUZ was a passenger on the bus that was involved in the accident of February 2, 2013 which is the subject of this action.

3. Plaintiff BARBARA ELLERBE is the parent and natural guardian of JAANAI HOLDEN, a minor. Plaintiff ELLERBE and minor plaintiff HOLDEN reside at 3000 Ford Road, Apartment H-62, Bristol, PA 19007. Minor Plaintiff JANAAI HOLDEN was a passenger on the bus that was involved in the accident of February 2, 2013 which is the subject of this action.

4. Plaintiff MONROE GRIFFIN is an adult individual residing at 87240 Glenthorne Road, Upper Darby, PA 19082. Plaintiff MONROE GRIFFIN was a passenger on the bus that was involved in the accident of February 2, 2013 which is the subject of this action.

5. Plaintiff AKILAH LINDLER is an adult individual residing at 909 Corinthian Avenue, Philadelphia, PA 19130. Plaintiff AKILAH LINDLER was a passenger on the bus that was involved in the accident of February 2, 2013 which is the subject of this action.

6. Plaintiff SIERRA MCSEED is an adult individual residing at 88 Verdant Road, Levittown, PA 19057. Plaintiff SIERRA MCSEED was a passenger on the bus that was involved in the accident of February 2, 2013 which is the subject of this action.

7. Plaintiff DANLADI MCSEED is an adult individual residing at 88 Verdant Road, Levittown, PA 19057. Plaintiff DANLADI MCSEED was a passenger on the bus that was involved in the accident of February 2, 2013 which is the subject of this action.

8. Plaintiff MA'ISHA O. CULBRETH is an adult individual residing at 232 Thunder Circle, Bensalem, PA 19020. Plaintiff CULBRETH was a passenger on the bus that was involved in the accident of February 2, 2013 which is the subject of this action.

9. Plaintiff MIRANDA M. MOWERY is an adult individual residing at 43 Woodbine Road, Levittown, PA 19057. Plaintiff MOWERY was a passenger on the bus that was involved in the accident of February 2, 2013 which is the subject of this action.

10. Plaintiff SUZANNE MURPHY is an adult individual residing at 43 Woodbine Road, Levittown, PA 19057. Plaintiff MURPHY was a passenger on the bus that was involved in the accident of February 2, 2013 which is the subject of this action.

11. Plaintiff IRIS LYNN SYKES is an adult individual residing at 843 North 65<sup>th</sup> Street, Philadelphia, PA 19151. Plaintiff SYKES was a passenger on the bus that was involved in the accident of February 2, 2013 which is the subject of this action.

12. Defendant RAYMOND TALMADGE owns and operates a business known as "Calvary Coach" which is Federal Motor Carrier authorized for passenger use by the United States Department of Transportation with its principal place of business at 100 N. 58<sup>th</sup> St. Philadelphia, Pennsylvania, 19139.

13. Defendant SAMUEL J. JACKSON is an adult individual currently residing at 1524 N. 54<sup>th</sup> St., Philadelphia, PA 19131. At all times relevant hereto, Defendant Jackson was the authorized agent, servant, borrowed servant, workman and/or employee of Defendant Raymond Talmadge D/B/A Calvary Coach.

14. At all times relevant hereto, Defendant RAYMOND TALMADGE D/B/A Calvary Coach was engaged in the business of providing transportation and motor carrier services to passengers, via bus transport, who had acquired the exclusive use of the motor vehicle to travel together under an itinerary specified in advance.

15. Defendant PREVOST CAR, INC. is now, and has been at all relevant times, a Canadian Corporation authorized to do business in the United States, and this Defendant has conducted substantial and continuous business in the Commonwealth of Massachusetts, including Suffolk County.

16. Defendant PREVOST CAR (US) INC. is now, and has been at all relevant times, a wholly owned subsidiary of Defendant PREVOST CAR. Defendant PREVOST CAR (US) INC. is a Delaware Corporation authorized to do business and it has at all relevant times conducted business and advertised in the Commonwealth of Massachusetts, including Suffolk County. Defendant PREVOST CAR (US) INC.'S registered agent for service is the Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801. These Defendants will be collectively referred to as "PREVOST".

17. Defendants PREVOST, individually and/or collectively, were at all relevant times in the business of designing, testing, manufacturing, supplying, marketing and selling motor coaches, including a 1996 PREVOST motor coach (VIN No. 2PCH33417TIO11357) that was being driven by Defendant JACKSON at the time of the incident which is the subject of this lawsuit.

18. Defendants PREVOST derived substantial revenue from the sale of its products in the Commonwealth of Massachusetts, including Suffolk County.

19. Defendant TOMTOM, NV is now, and has been at all relevant times, a Dutch Corporation authorized to business in the United States, and this Defendant has conducted substantial and continuous business in the Commonwealth of Massachusetts, including Suffolk County.

20. Defendant TOMTOM, INC. is now, and has been at all relevant times, a wholly owned subsidiary of Defendant TOMTOM, NV. Defendant TOMTOM, INC. is a Massachusetts Corporation authorized to do business and it has at all relevant times conducted business and advertised in the Commonwealth of Massachusetts, including Suffolk County. Defendant TOMTOM, INC.'S registered agent for service is the National Registered Agents, Inc., 155 Federal Street, Suite 700, Boston, MA 02110. These Defendants will be collectively referred to as "TOMTOM".

21. Defendants TOMTOM, individually and/or collectively, were at all relevant times in the business of designing, testing, manufacturing, supplying, marketing and selling automotive navigation systems (frequently referred to as "GPS systems"), including the TOMTOM XLN14644 that was being used by Defendant JACKSON in the PREVOST coach at the time of the incident which is the subject of this lawsuit.

22. Defendant GARMIN INTERNATIONAL, INC. is a Kansas Corporation authorized to do business and it has at all relevant times conducted business and advertised in the Commonwealth of Massachusetts, including Suffolk County. Defendant GARMIN INTERNATIONAL, INC.'S registered agent for service is David Ayres, 1200 East 151<sup>st</sup> Street, Olathe, KS 66062.

23. Defendant GARMIN NORTH AMERICA, INC. is a Kansas Corporation authorized to do business and it has at all relevant times conducted business and advertised in the



Commonwealth of Massachusetts, including Suffolk County. Defendant GARMIN INTERNATIONAL, INC.'S registered agent for service is David Ayres, 1200 East 151<sup>st</sup> Street, Olathe, KS 66062.

24. Defendant GARMIN USA, INC. is a Kansas Corporation authorized to do business and it has at all relevant times conducted business and advertised in the Commonwealth of Massachusetts, including Suffolk County. Defendant GARMIN INTERNATIONAL, INC.'S registered agent for service is David Ayres, 1200 East 151<sup>st</sup> Street, Olathe, KS 66062. These Defendants will be collectively referred to as "GARMIN".

25. Defendants GARMIN, individually and/or collectively, were at all relevant times in the business of designing, testing, manufacturing, supplying, marketing and selling automotive navigation systems (frequently referred to as "GPS systems"), including the GARMIN Nuvi 50 LM that was being used by Defendant JACKSON in the PREVOST coach at the time of the incident which is the subject of this lawsuit.

26. Defendant COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF CONSERVATION AND RECREATION ("MASS DCR") is an agency of the Commonwealth of Massachusetts with its principal offices located at 251 Causeway Street, Boston, MA 02114.

27. At all times relevant hereto Defendant MASS DCR by and through its agents, servants, and/or employees, assigned, maintained, constructed, controlled and were responsible for the roadway, street, highway, shoulder, berm, signage, and/or surrounding area of Soldiers Field Road, in Boston, Massachusetts, which is the situs of the accident described hereinafter.

### **JURISDICTION**

28. Personal jurisdiction over the foreign defendants exists by virtue of their presence in the Commonwealth of Massachusetts, where they regularly conduct business as foreign

corporations registered to do business in the Commonwealth pursuant to the provisions of G.L. c. 181, as amended. Personal jurisdiction over the foreign defendants also exists pursuant to G.L. c. 223A, §3 (a) (b) (c) & (d). These Defendants regularly conduct or solicit business and derive substantial revenue from goods used or consumed in the Commonwealth of Massachusetts

### **THE ACCIDENT OF FEBRUARY 2, 2013**

29. At approximately 6:30AM on February 2, 2013, the previously identified plaintiffs, minor plaintiffs, and incapacitated plaintiff (hereinafter collectively referred to as “the Plaintiffs”), along with several other passengers, boarded a PREVOST motor coach at the Destined for a Dream Foundation located at 101 Radcliffe Street, Bristol PA, for a day visit to Harvard University in Cambridge, Massachusetts.

30. The PREVOST motor coach in question was owned by Defendant RAYMOND TALMADGE D/B/A Calvary Coach and was being operated by Defendant JACKSON.

31. At all times relevant hereto, Defendant Jackson was using a TOMTOM model XLN14644 and/or GARMIN Nuvi 50 LM to provide him with driving directions to and from Boston Massachusetts on the date in question.

32. After concluding their visit to Harvard University, the passengers, including Plaintiffs, boarded the PREVOST motor coach for the return trip back to Pennsylvania.

33. Only minutes into their return journey, Defendant JACKSON, following the direction provided by his TOMTOM and/or GARMIN navigation device, turned onto Soldiers’ Field Road in Boston, Massachusetts.

34. Soldiers’ Field Road is a major crosstown parkway in Boston, Massachusetts running east and west. Soldiers’ Field Road has a 10-foot height restriction due to low overpasses.

35. At least one sign warning of the 10-foot height restriction on soldier's field road was missing, damaged, and/or not functioning appropriately on February 2, 2013.

36. In addition, construction on the Harvard Street overpass on the date of this accident served to obstruct height restrictions signs in the area.

37. The PREVOST coach in question was well over ten feet in height and violated the height restrictions for travel on Soldier's Field Road.

38. At approximately 7:30PM on February, 2, 2013, Defendant JACKSON was operating the PREVOST coach eastbound on Soldiers' Field Road in Boston, MA nearing the ten-foot overpass of the Western Avenue Bridge in accordance with the directions received from his TOMTOM and/or Garmin navigation device.

39. At the aforementioned time and place, Defendant JACKSON, in reliance on the directions from his TOMTOM and/or GARMIN device and failing to notice sign(s) concerning the height restriction, violently struck the overpass at the Western Avenue Bridge with the top of the PREVOST coach.

40. The only visible sign warning of the height danger posed by the Western Avenue Bridge overpass was the height restriction sign affixed to the overpass itself. Defendant Jackson either did not see this sign or, when he saw it, it was too late to bring the bus to a stop prior to colliding with the overpass.

41. As a result of the collision, the roof of the PREVOST coach was caused to collapse in a backward motion which resulted in the roof of the bus, the luggage rack and the television monitors, collapsing in a downward and backward motion striking Plaintiffs violently in the head and neck.

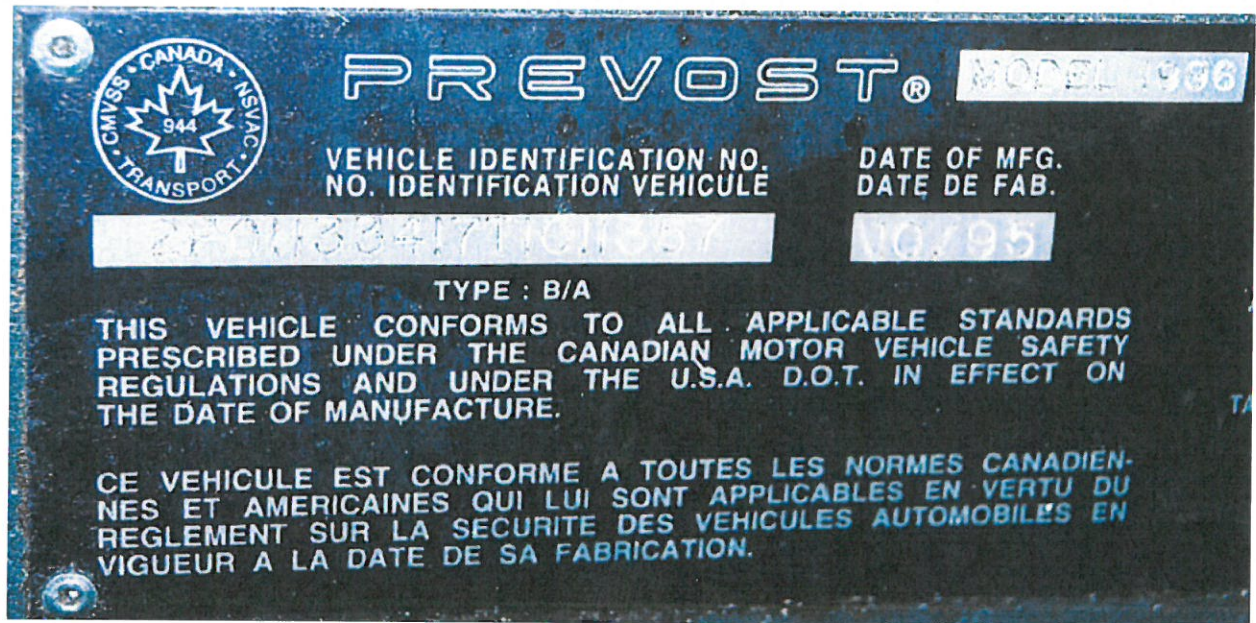
42. As a result of the collision with the overpass, the roof of the PREVOST coach collapsed reducing the coach's overall height and permitting it to pass underneath the overpass with only a small change in speed. The PREVOST coach eventually came to rest beyond the overpass where first responders provided aid to victims such as the Incapacitated Plaintiff Matthew Cruz as is depicted in this photograph:



#### **THE PREVOST COACH**

43. The motor coach involved in the incident was a PREVOST Model 1996 with the VIN#2PCH33417TIO11357. The identifying information for the PREVOST coach is as follows:





44. The interior of the PREVOST coach in question was configured with one center aisle with two seats on each side of said aisle. Above the seats on both sides of the aisle, there were compartments to be used by passengers for storage of luggage and other items. Directly beneath the compartments were television monitors hung at regular intervals for passenger entertainment.

45. The below photograph depicts the interior configuration of the aisle, storage compartments, and television monitors of an exemplar of a 1996 PREVOST coach prior to the incident which is the subject of this litigation.



46. As a result of the collision with the overpass, the roof, storage compartments, and television monitors in the above photograph were forced backwards and down onto the passengers in the PREVOST coach including the Plaintiffs.

47. Plaintiffs were violently struck in the head by these portions of the interior of the PREVOST coach and caused to sustain, *inter alia*, the significant injuries and damages outlined in detail below.

**THE TOMTOM MODEL XLN14644 AND/OR GARMIN NUVI 50 LM**

48. Defendant JACKSON was using a TOMTOM Model XLN 14644 automobile navigation system (“TOMTOM GPS”) and/or Garmin Nuvi 50 LM (“GARMIN GPS”) to provide him with driving directions on the date of the incident which is the subject of this Amended Complaint.

49. It is a well-known fact that faulty directions onto height restricted roadways by GPS devices have resulted in numerous bridge strikes throughout the United States.

50. The TOMTOM GPS and GARMIN GPS in question did not have warnings or instructions forbidding use in commercial and/or height restricted vehicles.

51. The TOMTOM GPS and GAMIN GPS in question did not provide any warnings to Defendant JACKSON concerning height restrictions on Soliders' Field Road prior to his entering said roadway.

52. The TOMTOM GPS and GARMIN GPS in question did not provide a platform for Defendant JACKSON to enter the height of the PREVOST coach into the device as a data point thus permitting the TOMTOM GPS and GARMIN GPS to generate a route which would have avoided all roadways with height restrictions applicable to the PREVOST coach.

53. Both Garmin and Tom Tom possessed the data necessary to provide information to users regarding height restriction and made that data available on other models of their products.

#### **INJURIES TO INCAPACITED PLAINTIFF MATTHEW CRUZ**

54. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Incapacitated Plaintiff MATTHEW CRUZ was violently impacted within the vehicle following the collision with the overpass.

55. Incapacitated Plaintiff MATTHEW CRUZ was seated in the passenger-side, window seat of the 7<sup>th</sup> row at the time of the collision. The below photographs depict the 7<sup>th</sup> row of the PREVOST coach in question from the front and side views post-accident.





56. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Incapacitated Plaintiff MATTHEW CRUZ was caused to suffer severe, serious and permanent personal injuries to his back and head including, but not limited to:



Fractures of the C-4 through C-7, and T-1 through T-5 vertebrae; a completely shattered C-6 vertebrae causing bone fragments to migrate into his spinal canal and requiring, to date, at least 15 hours of surgery to set these fractures with rods and pins, and have his C-6 vertebrae replaced with a cage; an arterial dissection; a severe laceration to his scalp requiring 7 staples to close. Matthew's injuries resulted in the development of fluid in his lungs requiring respiratory support by intubation for at least 12 days. He developed high fevers. He developed intestinal ileus, which is extremely painful and will likely require an invasive procedure. Matthew also suffered severe psychological, mental and emotional distress. Many of Matthew's injuries are permanent in nature and will cause him future pain, disability, emotional and psychological stress and embarrassment.

57. As a direct and proximate result of Defendants' negligent conduct, Incapacitated Plaintiff MATTHEW CRUZ was forced to incur substantial physical injuries by reason of which Incapacitated Plaintiff MATTHEW CRUZ has suffered mental anguish, physical pain and inconvenience and is still likely to suffer in the future. The injuries sustained are serious and permanent in nature and, as a result, MATTHEW CRUZ is entitled to recover non-economic losses.

58. All of the foregoing injuries forced Incapacitated Plaintiff MATTHEW CRUZ to suffer extreme physical pain and mental anguish, and as a result he has suffered and will continue to suffer the same for an indefinite period of time in the future, all to his great detriment and loss.

59. As a further result of his injuries and as a further direct result of the negligence and other liability producing conduct of Defendants, Incapacitated Plaintiff MATTHEW CRUZ

has been and will continue to be unable to engage in his normal daily activities, all to his great detriment and loss.

60. As a further result of his injuries and as a further direct result of the negligence and other liability producing conduct of Defendants, Incapacitated Plaintiff MATTHEW CRUZ has incurred medical and healthcare expenses for the treatment and care of his injuries and will continue to incur medical and healthcare expenses for the treatment and care of his injuries for an indefinite time into the future, to his detriment and loss.

61. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Incapacitated Plaintiff MATTHEW CRUZ has suffered and will in the future suffer medical expenses, loss of earnings and earning capacity and out-of-pocket expenses, all to his great detriment and loss.

62. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Incapacitated Plaintiff MATTHEW CRUZ has suffered and will continue to suffer in the future a loss of life's pleasures, to his great detriment and loss.

63. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Incapacitated Plaintiff MATTHEW CRUZ has been prevented and will in the future be prevented from attending to his activities of daily life, to his great detriment and loss.

64. The injuries that Incapacitated Plaintiff MATTHEW CRUZ suffered were proximately and directly caused by the Defendants and were in no way caused by any act or failure to act on the part of the Incapacitated Plaintiff.

### **INJURIES TO MINOR PLAINTIFF JAANAI HOLDEN**

65. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Minor Plaintiff JAANAI HOLDEN was violently impacted within the vehicle following the collision with the overpass.

66. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Minor Plaintiff JAANAI HOLDEN was caused to suffer severe, serious and permanent personal injuries including, but not limited to: closed head trauma; concussion; cervical fractures to C3, C4, and C5; vision impairment; cognitive deficits; severe anxiety; PTSD; recurring headaches; episodes of blurred vision; significant neuro-cognitive deficits with reduced functioning; exacerbation of prior conditions and emotional difficulties including post-traumatic stress and reduced ability to process information; and the need for intensive therapeutic and psychiatric interventions. Many of Jaanai's injuries are permanent in nature and will cause her future pain, disability, emotional and psychological stress and embarrassment.

67. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Minor Plaintiff JAANAI HOLDEN was forced to incur substantial physical injuries by reason of which Minor Plaintiff JAANAI HOLDEN has suffered mental anguish, physical pain and inconvenience and is still likely to suffer in the future. The injuries sustained are serious and permanent in nature and, as a result, JAANAI HOLDEN is entitled to recover non-economic losses.

68. All of the foregoing injuries forced Minor Plaintiff JAANAI HOLDEN to suffer extreme physical pain and mental anguish, and as a result she has suffered and will continue to suffer the same for an indefinite period of time in the future, all to her great detriment and loss.

69. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Minor Plaintiff JAANAI HOLDEN has been and will continue to be unable to engage in her normal daily activities, all to her great detriment and loss.

70. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Minor Plaintiff JAANAI HOLDEN has incurred medical and healthcare expenses for the treatment and care of her injuries and will continue to incur medical and healthcare expenses for the treatment and care of her injuries for an indefinite time into the future, to her detriment and loss.

71. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Minor Plaintiff JAANAI HOLDEN has suffered and will in the future suffer medical expenses, loss of earnings and earning capacity and out-of-pocket expenses, all to her great detriment and loss.

72. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Minor Plaintiff JAANAI HOLDEN has suffered and will continue to suffer in the future a loss of life's pleasures, to her great detriment and loss.

73. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Minor Plaintiff JAANAI HOLDEN has been prevented and will in the future be prevented from attending to her activities of daily life, to her great detriment and loss.

74. The injuries that Minor Plaintiff JAANAI HOLDEN suffered were proximately and directly caused by the Defendants and were in no way caused by any act or failure to act on the part of the Minor Plaintiff.



### **INJURIES TO PLAINTIFF MONROE GRIFFIN**

75. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MONROE GRIFFIN was violently impacted within the vehicle following the collision with the overpass.

76. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MONROE GRIFFIN was caused to suffer severe, serious and permanent personal injuries including, but not limited to: concussion; closed-head injury; and injuries to his lumbar spine including but not limited to a disc herniation. Many of Monroe's injuries are permanent in nature and will cause him future pain, disability, emotional and psychological stress and embarrassment.

77. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MONROE GRIFFIN was forced to incur substantial physical injuries by reason of which Plaintiff MONROE GRIFFIN has suffered mental anguish, physical pain and inconvenience and is still likely to suffer in the future. The injuries sustained are serious and permanent in nature and, as a result, MONROE GRIFFIN is entitled to recover non-economic losses.

78. All of the foregoing injuries forced Plaintiff MONROE GRIFFIN to suffer extreme physical pain and mental anguish, and as a result he has suffered and will continue to suffer the same for an indefinite period of time in the future, all to his great detriment and loss.

79. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MONROE GRIFFIN has been and will continue to be unable to engage in his normal daily activities, all to her great detriment and loss.

80. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MONROE GRIFFIN has incurred medical and healthcare expenses for the treatment and care of his injuries and will continue to incur medical and healthcare expenses for the treatment and care of his injuries for an indefinite time into the future, to his detriment and loss.

81. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MONROE GRIFFIN has suffered and will in the future suffer medical expenses, loss of earnings and earning capacity and out-of-pocket expenses, all to his great detriment and loss.

82. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MONROE GRIFFIN has suffered and will continue to suffer in the future a loss of life's pleasures, to his great detriment and loss.

83. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MONROE GRIFFIN has been prevented and will in the future be prevented from attending to her activities of daily life, to his great detriment and loss.

84. The injuries that Plaintiff MONROE GRIFFIN suffered were proximately and directly caused by the Defendants and were in no way caused by any act or failure to act on the part of the Minor Plaintiff.

#### **INJURIES TO PLAINTIFF AKILAH LINDLER**

85. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff AKILAH LINDLER was violently impacted within the vehicle following the collision with the overpass.

86. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff AKILAH LINDLER was caused to suffer severe, serious and permanent personal injuries including, but not limited to: concussion; closed-head injury; and injuries to his lumbar spine including but not limited to a disc herniation. Many of Akilah's injuries are permanent in nature and will cause her future pain, disability, emotional and psychological stress and embarrassment.

87. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff AKILAH LINDLER was forced to incur substantial physical injuries by reason of which Plaintiff AKILAH LINDLER has suffered mental anguish, physical pain and inconvenience and is still likely to suffer in the future. The injuries sustained are serious and permanent in nature and, as a result, AKILAH LINDLER is entitled to recover non-economic losses.

88. All of the foregoing injuries forced Plaintiff AKILAH LINDLER to suffer extreme physical pain and mental anguish, and as a result she has suffered and will continue to suffer the same for an indefinite period of time in the future, all to her great detriment and loss.

89. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff AKILAH LINDLER has been and will continue to be unable to engage in her normal daily activities, all to her great detriment and loss.

90. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff AKILAH LINDLER has incurred medical and healthcare expenses for the treatment and care of her injuries and will continue to incur medical and healthcare expenses for the treatment and care of her injuries for an indefinite time into the future, to her detriment and loss.

91. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff AKILAH LINDLER has suffered and will in the future suffer medical expenses, loss of earnings and earning capacity and out-of-pocket expenses, all to her great detriment and loss.

92. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff AKILAH LINDLER has suffered and will continue to suffer in the future a loss of life's pleasures, to her great detriment and loss.

93. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff AKILAH LINDLER has been prevented and will in the future be prevented from attending to her activities of daily life, to her great detriment and loss.

94. The injuries that Plaintiff AKILAH LINDLER suffered were proximately and directly caused by the Defendants and were in no way caused by any act or failure to act on the part of the Plaintiff.

#### **INJURIES TO PLAINTIFF SIERRA MCSEED**

95. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff SIERRA MCSEED was violently impacted within the vehicle following the collision with the overpass.

96. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff SIERRA MCSEED was caused to suffer severe, serious and permanent personal injuries including, but not limited to: injuries to her neck and back. Many of Sierra's injuries are permanent in nature and will cause her future pain, disability, emotional and psychological stress and embarrassment.

97. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff SIERRA MCSEED was forced to incur substantial physical injuries by reason of which Plaintiff SIERRA MCSEED has suffered mental anguish, physical pain and inconvenience and is still likely to suffer in the future. The injuries sustained are serious and permanent in nature and, as a result, SIERRA MCSEED is entitled to recover non-economic losses.

98. All of the foregoing injuries forced Plaintiff SIERRA MCSEED to suffer extreme physical pain and mental anguish, and as a result she has suffered and will continue to suffer the same for an indefinite period of time in the future, all to her great detriment and loss.

99. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff SIERRA MCSEED has been and will continue to be unable to engage in her normal daily activities, all to her great detriment and loss.

100. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff SIERRA MCSEED has incurred medical and healthcare expenses for the treatment and care of her injuries and will continue to incur medical and healthcare expenses for the treatment and care of her injuries for an indefinite time into the future, to her detriment and loss.

101. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff SIERRA MCSEED has suffered and will in the future suffer medical expenses, loss of earnings and earning capacity and out-of-pocket expenses, all to her great detriment and loss.

102. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff SIERRA MCSEED has suffered and will continue to suffer in the future a loss of life's pleasures, to her great detriment and loss.

103. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff SIERRA MCSEED has been prevented and will in the future be prevented from attending to her activities of daily life, to her great detriment and loss.

104. The injuries that Plaintiff SIERRA MCSEED suffered were proximately and directly caused by the Defendants and were in no way caused by any act or failure to act on the part of the Plaintiff.

#### **INJURIES TO PLAINTIFF DANLADI MCSEED**

105. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff DANLADI MCSEED was violently impacted within the vehicle following the collision with the overpass.

106. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff DANLADI MCSEED was caused to suffer severe, serious and permanent personal injuries including, but not limited to: deep facial and scalp lacerations requiring plastic surgery; back injuries; and a left laminar fracture at the C4 level. Many of Danladi's injuries are permanent in nature and will cause him future pain, disability, emotional and psychological stress and embarrassment.

107. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff DANLADI MCSEED was forced to incur substantial physical injuries by reason of which Plaintiff DANLADI MCSEED has suffered mental anguish, physical pain and inconvenience and is still likely to suffer in the future. The injuries sustained are



serious and permanent in nature and, as a result, DANLADI MCSEED is entitled to recover non-economic losses.

108. All of the foregoing injuries forced Plaintiff DANLADI MCSEED to suffer extreme physical pain and mental anguish, and as a result he has suffered and will continue to suffer the same for an indefinite period of time in the future, all to his great detriment and loss.

109. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff DANLADI MCSEED has been and will continue to be unable to engage in his normal daily activities, all to his great detriment and loss.

110. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff DANLADI MCSEED has incurred medical and healthcare expenses for the treatment and care of his injuries and will continue to incur medical and healthcare expenses for the treatment and care of his injuries for an indefinite time into the future, to his detriment and loss.

111. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff DANLADI MCSEED has suffered and will in the future suffer medical expenses, loss of earnings and earning capacity and out-of-pocket expenses, all to his great detriment and loss.

112. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff DANLADI MCSEED has suffered and will continue to suffer in the future a loss of life's pleasures, to his great detriment and loss.

113. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff DANLADI MCSEED has been prevented and will in the future be prevented from attending to his activities of daily life, to his great detriment and loss.

114. The injuries that Plaintiff DANLADI MCSEED suffered were proximately and directly caused by the Defendants and were in no way caused by any act or failure to act on the part of the Plaintiff.

**INJURIES TO PLAINTIFF MA'ISHA O. CULBRETH**

115. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MA'ISHA CULBRETH was violently impacted within the vehicle following the collision with the overpass.

116. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MA'ISHA CULBRETH was caused to suffer severe, serious and permanent personal injuries including, but not limited to: concussion; post concussive syndrome; chronic cervical strain and sprain; chronic thoracic strain and sprain; chronic lumbar strain and sprain; temporomandibular joint strain and sprain; and multiple lacerations to the face. Many of Ma'isha's injuries are permanent in nature and will cause her future pain, disability, emotional and psychological stress and embarrassment.

117. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MA'ISHA CULBRETH was forced to incur substantial physical injuries by reason of which Plaintiff MA'ISHA CULBRETH has suffered mental anguish, physical pain and inconvenience and is still likely to suffer in the future. The injuries sustained are serious and permanent in nature and, as a result, MA'ISHA CULBRETH is entitled to recover non-economic losses.

118. All of the foregoing injuries forced Plaintiff MA'ISHA CULBRETH to suffer extreme physical pain and mental anguish, and as a result she has suffered and will continue to suffer the same for an indefinite period of time in the future, all to her great detriment and loss.

119. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MA'ISHA CULBRETH has been and will continue to be unable to engage in her normal daily activities, all to her great detriment and loss.

120. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MA'ISHA CULBRETH has incurred medical and healthcare expenses for the treatment and care of her injuries and will continue to incur medical and healthcare expenses for the treatment and care of her injuries for an indefinite time into the future, to her detriment and loss.

121. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MA'ISHA CULBRETH has suffered and will in the future suffer medical expenses, loss of earnings and earning capacity and out-of-pocket expenses, all to her great detriment and loss.

122. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MA'ISHA CULBRETH has suffered and will continue to suffer in the future a loss of life's pleasures, to her great detriment and loss.

123. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MA'ISHA CULBRETH has been prevented and will in the future be prevented from attending to her activities of daily life, to her great detriment and loss.

124. The injuries that Plaintiff MA'ISHA CULBRETH suffered were proximately and directly caused by the Defendants and were in no way caused by any act or failure to act on the part of the Plaintiff.

### **INJURIES TO PLAINTIFF MIRANDA M. MOWERY**

125. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MIRANDA MOWERY was violently impacted within the vehicle following the collision with the overpass.

126. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MIRANDA MOWERY was caused to suffer severe, serious and permanent personal injuries including, but not limited to: concussion; post concussive syndrome; cognitive impairment with memory loss; acute cervical strain; thoracic strain and sprain; lumbar spine strain; lumbar herniated nucleus pulposus; right foot drop; anxiety and depression. Many of Miranda's injuries are permanent in nature and will cause her future pain, disability, emotional and psychological stress and embarrassment.

127. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MIRANDA MOWERY was forced to incur substantial physical injuries by reason of which Plaintiff MIRANDA MOWERY has suffered mental anguish, physical pain and inconvenience and is still likely to suffer in the future. The injuries sustained are serious and permanent in nature and, as a result, MIRANDA MOWERY is entitled to recover non-economic losses.

128. All of the foregoing injuries forced Plaintiff MIRANDA MOWERY to suffer extreme physical pain and mental anguish, and as a result she has suffered and will continue to suffer the same for an indefinite period of time in the future, all to her great detriment and loss.

129. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MIRANDA MOWERY has been and will continue to be unable to engage in her normal daily activities, all to her great detriment and loss.



130. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MIRANDA MOWERY has incurred medical and healthcare expenses for the treatment and care of her injuries and will continue to incur medical and healthcare expenses for the treatment and care of her injuries for an indefinite time into the future, to her detriment and loss.

131. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MIRANDA MOWERY has suffered and will in the future suffer medical expenses, loss of earnings and earning capacity and out-of-pocket expenses, all to her great detriment and loss.

132. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MIRANDA MOWERY has suffered and will continue to suffer in the future a loss of life's pleasures, to her great detriment and loss.

133. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff MIRANDA MOWERY has been prevented and will in the future be prevented from attending to her activities of daily life, to her great detriment and loss.

134. The injuries that Plaintiff MIRANDA MOWERY suffered were proximately and directly caused by the Defendants and were in no way caused by any act or failure to act on the part of the Plaintiff.

#### **INJURIES TO PLAINTIFF SUZANNE MURPHY**

135. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff SUZANNE MURPHY was violently impacted within the vehicle following the collision with the overpass.

136. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff SUZANNE MURPHY was caused to suffer severe, serious and permanent personal injuries including, but not limited to: C2, C3, C4, T5 right, transverse process fractures; T6 and T7 right, displaced transverse process fractures; T8 chance fracture; 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> left displaced rib fractures; right hand fracture; cellulitis and swelling of legs; and PTSD. Many of Suzanne's injuries are permanent in nature and will cause her future pain, disability, emotional and psychological stress and embarrassment.

137. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff SUZANNE MURPHY was forced to incur substantial physical injuries by reason of which Plaintiff SUZANNE MURPHY has suffered mental anguish, physical pain and inconvenience and is still likely to suffer in the future. The injuries sustained are serious and permanent in nature and, as a result, SUZANNE MURPHY is entitled to recover non-economic losses.

138. All of the foregoing injuries forced Plaintiff SUZANNE MURPHY to suffer extreme physical pain and mental anguish, and as a result she has suffered and will continue to suffer the same for an indefinite period of time in the future, all to her great detriment and loss.

139. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff SUZANNE MURPHY has been and will continue to be unable to engage in her normal daily activities, all to her great detriment and loss.

140. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff SUZANNE MURPHY has incurred medical and healthcare expenses for the treatment and care of her injuries and will continue to incur medical and

healthcare expenses for the treatment and care of her injuries for an indefinite time into the future, to her detriment and loss.

141. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff SUZANNE MURPHY has suffered and will in the future suffer medical expenses, loss of earnings and earning capacity and out-of-pocket expenses, all to her great detriment and loss.

142. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff SUZANNE MURPHY has suffered and will continue to suffer in the future a loss of life's pleasures, to her great detriment and loss.

143. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff SUZANNE MURPHY has been prevented and will in the future be prevented from attending to her activities of daily life, to her great detriment and loss.

144. The injuries that Plaintiff SUZANNE MURPHY suffered were proximately and directly caused by the Defendants and were in no way caused by any act or failure to act on the part of the Plaintiff.

#### **INJURIES TO PLAINTIFF LABRIYAH D. RYLES**

145. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff LABRIYAH RYLES was violently impacted within the vehicle following the collision with the overpass.

146. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff LABRIYAH RYLES was caused to suffer severe, serious and permanent personal injuries including, but not limited to: displaced cervical spine fracture at C3 right transverse process; displaced cervical spine fracture at C4 right transverse process;

displaced fracture of right posterior second rib; pulmonary contusion; concussion, cognitive impairment with memory loss. Many of Labriyah's injuries are permanent in nature and will cause her future pain, disability, emotional and psychological stress and embarrassment.

147. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff LABRIYAH RYLES was forced to incur substantial physical injuries by reason of which Plaintiff LABRIYAH RYLES has suffered mental anguish, physical pain and inconvenience and is still likely to suffer in the future. The injuries sustained are serious and permanent in nature and, as a result, LABRIYAH RYLES is entitled to recover non-economic losses.

148. All of the foregoing injuries forced Plaintiff LABRIYAH RYLES to suffer extreme physical pain and mental anguish, and as a result she has suffered and will continue to suffer the same for an indefinite period of time in the future, all to her great detriment and loss.

149. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff LABRIYAH RYLES has been and will continue to be unable to engage in her normal daily activities, all to her great detriment and loss.

150. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff LABRIYAH RYLES has incurred medical and healthcare expenses for the treatment and care of her injuries and will continue to incur medical and healthcare expenses for the treatment and care of her injuries for an indefinite time into the future, to her detriment and loss.

151. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff LABRIYAH RYLES has suffered and will in the future suffer



medical expenses, loss of earnings and earning capacity and out-of-pocket expenses, all to her great detriment and loss.

152. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff LABRIYAH RYLES has suffered and will continue to suffer in the future a loss of life's pleasures, to her great detriment and loss.

153. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff LABRIYAH RYLES has been prevented and will in the future be prevented from attending to her activities of daily life, to her great detriment and loss.

154. The injuries that Plaintiff LABRIYAH RYLES suffered were proximately and directly caused by the Defendants and were in no way caused by any act or failure to act on the part of the Plaintiff.

#### **INJURIES TO PLAINTIFF IRIS LYNN SYKES**

155. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff IRIS SYKES was violently impacted within the vehicle following the collision with the overpass.

156. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff IRIS SYKES was caused to suffer severe, serious and permanent personal injuries including, but not limited to: head trauma; loss of consciousness; large complex laceration to the top right posterior scalp with skull exposed; fracture of first right rib; fracture of sternomanubrial joint with associated small hematoma; lacerated right ear; fracture of the posterior elements of C6 with bilateral facet dislocation at C6-C7; fracture through the C7 posterior elements including the left lamina; fusion of spine from C5-C7; significant posterior ligamentous complex injury; L1 superior end-plate fracture; diffuse

numbness and tingling in the upper extremities from shoulder to elbow. Many of Iris' injuries are permanent in nature and will cause her future pain, disability, emotional and psychological stress and embarrassment.

157. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff IRIS SYKES was forced to incur substantial physical injuries by reason of which Plaintiff IRIS SYKES has suffered mental anguish, physical pain and inconvenience and is still likely to suffer in the future. The injuries sustained are serious and permanent in nature and, as a result, IRIS SYKES is entitled to recover non-economic losses.

158. All of the foregoing injuries forced Plaintiff IRIS SYKES to suffer extreme physical pain and mental anguish, and as a result she has suffered and will continue to suffer the same for an indefinite period of time in the future, all to her great detriment and loss.

159. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff IRIS SYKES has been and will continue to be unable to engage in her normal daily activities, all to her great detriment and loss.

160. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff IRIS SYKES has incurred medical and healthcare expenses for the treatment and care of her injuries and will continue to incur medical and healthcare expenses for the treatment and care of her injuries for an indefinite time into the future, to her detriment and loss.

161. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff IRIS SYKES has suffered and will in the future suffer medical expenses, loss of earnings and earning capacity and out-of-pocket expenses, all to her great detriment and loss.

162. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff IRIS SYKES has suffered and will continue to suffer in the future a loss of life's pleasures, to her great detriment and loss.

163. As a direct and proximate result of negligence and other liability producing conduct of Defendants, Plaintiff IRIS SYKES has been prevented and will in the future be prevented from attending to her activities of daily life, to her great detriment and loss.

164. The injuries that Plaintiff IRIS SYKES suffered were proximately and directly caused by the Defendants and were in no way caused by any act or failure to act on the part of the Plaintiff.

**COUNT I**  
**NEGLIGENCE AS TO DEFENDANT SAMUEL J. JACKSON**

165. Plaintiffs hereby incorporate the allegations of the preceding and subsequent paragraphs as if fully set forth herein.

166. Defendant JACKSON at all times relevant hereto was the authorized agent, servant, borrowed servant, workman and/or employee of Defendant RAYMOND TALMADGE D/B/A Calvary Coach.

167. At all times relevant hereto, Defendant RAYMOND TALMADGE D/B/A Calvary Coach acted by and through his agents, servants, borrowed servants, workmen and/or employees, including but not limited to Defendant JACKSON, who were within the course and scope of their employment and authority.

168. At all times relevant hereto, Defendant RAYMOND TALMADGE D/B/A Calvary Coach was engaged in the business of providing transportation and motor carrier services to passengers, via bus transport, who had acquired the exclusive use of the motor vehicle to travel together under an itinerary specified in advance.

169. The negligence, carelessness, reckless and grossly negligent conduct of Defendant JACKSON consisted, *inter alia*, of:

- (a) inattentiveness in the operation of a motor vehicle caused as result of looking at a global positioning device or possibly other devices;
- (b) failing to abide by height restrictions of the roadway;
- (c) failing to observe warning signs which advised of “low clearance” and “cars only” on Soldiers’ Field Road;
- (d) failing to plan out the trip in advance so as to only use safer highways appropriate for commercial vehicles over 10 feet high;
- (e) failing to employ a commercial GPS in preparing the route, which would have advised of commercial vehicle restrictions;
- (f) planning a trip which required over 10 hours driving and longer “on duty” hours in a 19 hour period;
- (g) operating said vehicle without due regard to the rights, safety, and position of Plaintiffs and other drivers on the highway;
- (h) failing to apply the brakes of the vehicle in such a manner that it could be stopped in time to avoid impact with the overpass;
- (i) operating his motor vehicle in travel with careless, reckless and grossly negligent disregard and so as to pose a high degree of risk to those around him;
- (j) failing to operate said vehicle in accordance with existing traffic conditions and traffic controls;
- (k) failing to have said vehicle under proper and adequate control at all times;
- (l) operating said vehicle so as to create a dangerous situation for other vehicles on the roadway;
- (m) in otherwise operating said vehicle in a careless, reckless, and grossly negligent manner with blatant disregard to Plaintiffs; and
- (n) negligence, carelessness and recklessness at law as to the operation of said vehicle when defendants knew or should have known that Defendant JACKSON was operating the charter bus in violation of Federal Motor Carrier regulations pertaining to hours of service.



170. The negligence, carelessness, recklessness, gross negligence and blatant disregard of Defendant JACKSON as set forth herein was the proximate and sole cause of the injuries and damages to Plaintiffs and expenses incurred as set forth above.

WHEREFORE, Plaintiffs demand judgment against Defendants in an amount in excess of the amount requiring compulsory arbitration.

**COUNT II**  
**NEGLIGENCE AND VICARIOUS LIABILITY AS TO DEFENDANT RAYMOND**  
**TALMADGE D/B/A/ CALVARY COACH**

171. Plaintiffs hereby incorporate the preceding and subsequent paragraphs as if fully set forth herein.

172. As a result of the aforesaid accident, Plaintiffs were violently impacted inside the vehicle and caused to suffer serious and permanent injuries.

173. At all times relevant hereto, Defendant RAYMOND TALMADGE D/B/A Calvary Coach acted by and through his agents, servants, borrowed servants, workmen and/or employees, including but not limited to Defendant JACKSON, who were within the course and scope of their employment and authority. Defendant RAYMOND TALMADGE D/B/A Calvary Coach is vicariously liable for the actions, acts, and/or omissions of its agents, servants, borrowed servants, workmen and/or employees, including but not limited to Defendant JACKSON.

174. At all times relevant hereto, Defendant RAYMOND TALMADGE D/B/A Calvary Coach was engaged in the business of providing transportation and motor carrier services to passengers, via bus transport, who had acquired the exclusive use of the motor vehicle to travel together under an itinerary specified in advance.

175. The negligent, carelessness, reckless, wanton, grossly negligent and intentional conduct of Defendant RAYMOND TALMADGE D/B/A Calvary Coach consisted, *inter alia*, of:

- (a) Negligently entrusting a motor vehicle to an individual that Defendant knew or should have known was incapable of operating said vehicle in a safe and lawful manner or who was not properly trained to do so;
- (b) Negligently entrusting a motor vehicle to an individual that Defendant knew or should have known was incompetent and unsafe driver;
- (c) Failing to equip the vehicle with a commercial GPS which would advise of road restrictions for commercial vehicles;
- (d) Entrusting a motor vehicle to an individual that Defendant knew or should have known was not trained to map out a safe route to transport passengers in a commercial bus;
- (e) Negligently entrusting a motor vehicle to an individual without undertaking adequate measures to ensure that the driver was capable of operating said motor vehicle in a safe and lawful manner;
- (f) Negligently entrusting a motor vehicle to an individual that Defendant knew or should have known to have the propensities for failure to operate and control the motor vehicle so that it would not become a hazard to persons such as Plaintiffs;
- (g) Negligently entrusting a motor vehicle to an individual that Defendant knew or should have known to have the propensities for failure to keep a proper look-out;
- (h) Negligently entrusting a motor vehicle to an individual that Defendant knew or should have known would be in violation of Federal Regulations pertaining to hours of service during the course of this trip;
- (i) Failure to properly train and supervise their agents, servants, borrowed servants, workmen and /or employees, including but not limited to Defendant Jackson;
- (j) Failure to control the acts of their agents, servants, borrowed servants, workmen and /or employees, including but not limited to Defendant Jackson; and
- (k) Negligently, recklessly, knowingly and intentionally failing to comply with the standards promulgated by the Federal Motor Carrier Safety Administration.

176. The negligence, carelessness, recklessness, gross negligence and wanton disregard of Defendant RAYMOND TALMADGE D/B/A Calvary Coach as set forth herein was the proximate and sole cause of the injuries and damages to Plaintiffs and expenses incurred as set forth above.

177. The Plaintiffs seek damages for their pain and suffering as well as damages for future loss of income, pensions and other such pecuniary losses resulting from the injuries suffered by Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against Defendants in an amount in excess of the amount requiring compulsory arbitration.

**COUNT III**  
**BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY AS TO**  
**DEFENDANTS PREVOST**

178. Plaintiffs hereby incorporate the preceding and subsequent paragraphs as if fully set forth herein.

179. At all relevant times, the PREVOST defendants were engaged in the business of designing, testing, manufacturing, assembling, labeling, marketing, distributing and/or selling to American consumers and the Massachusetts citizenry motor coaches, including the 1996 PREVOST coach at issue in this case. The subject PREVOST coach was marketed, sold, distributed and used in the Commonwealth of Massachusetts and Suffolk County.

180. The PREVOST coach was expected to and did reach users including Plaintiffs without substantial change in the condition in which it was designed, manufactured, assembled, distributed, sold, rented, leased and/or supplied.

181. In promoting, selling, supplying, and delivering the PREVOST coach, the PREVOST defendants expressly and impliedly warranted that the vehicle was merchantable, fit and safe for the ordinary and foreseeable purposes for which it was sold.

182. The Defendants breached these implied warranties by delivering and/or supplying the PREVOST coach in an unsafe, defective and unfit condition.

183. The resulting injuries to Plaintiffs, and other damages described herein were the proximate result of the PREVOST defendants' breach of warranties.

184. Plaintiffs aver that the PREVOST defendants, through their agents, servants, workmen, and/or employees are liable for breaching the implied warranty of merchantability under the law because:

- (a) The PREVOST coach was defective, unsafe, and not crashworthy;
- (b) The PREVOST coach was unreasonably dangerous;
- (c) The PREVOST coach was not safe for its intended use and purpose in the common carrier industry;
- (d) The PREVOST coach lacked the necessary safety features to make it safe for its intended use and purpose so that it could be operated in a safe manner;
- (e) The PREVOST coach could have been designed more safely;
- (f) The PREVOST coach was designed, assembled, manufactured, sold, supplied and/or distributed without adequate warnings;
- (g) The PREVOST coach's interior configuration and, in particular, the television monitors, created an unreasonable danger to passengers when alternatives designs were readily available;
- (h) The PREVOST coach was offered for sale and marketed with unreasonably dangerous instructional/warning messages so that the ordinary consumer was uninformed of the safety risks posed by the interior configuration of the coach and, in particular, the television monitors;

- (i) The PREVOST coach was offered for sale and marketed without adequately placed and worded instructional/warning messages to fairly and safely alert the traveling public to the dangers associated with the television monitor configuration;
- (j) THE PREVOST DEFENDANTS violated State, Local and/or industry standards;
- (k) The PREVOST DEFENDANTS failed to design the roof supports so that the roof collapse would not invade the passenger compartment as it did in this accident, thus reducing the potential seriousness of injuries to passengers;
- (l) THE PREVOST DEFENDANTS failed to adequately and properly test the effect of a roof collapse collision on passengers;
- (m) THE PREVOST DEFENDANTS willfully and wantonly failed to take steps to make the PREVOST coach safe for its intended use and purpose in an attempt to reduce production costs and increase Defendants' profits; and
- (n) THE PREVOST DEFENDANTS acted in disregard of a foreseeable and foreseen risk that individuals would be injured while passengers on the PREVOST coach during roof collapse accidents.

185. Because of the defective design, manufacture, and production of the aforementioned aspects, components, and systems of the PREVOST coach, it was inherently dangerous in the event of a foreseeable collision and, as a result, the vehicle was unreasonably dangerous and should not have been placed into the stream of commerce without design and/or installation modification.

186. As a direct and proximate result of the defective design, marketing and manufacture of the PREVOST coach, as well as other errors and omissions described below, Plaintiffs were caused to sustain the serious injuries outlined above.

WHEREFORE, Plaintiffs demand judgment against Defendants in an amount in excess of the amount requiring compulsory arbitration.

**COUNT IV**  
**NEGLIGENCE AS TO DEFENDANTS PREVOST**

187. Plaintiffs hereby incorporate the preceding and subsequent paragraphs as if fully set forth herein.

188. The PREVOST defendants are also liable to Plaintiffs for negligence and gross negligence in general and specifically for the following acts and omissions:

- (a) failing to include a reasonably designed television monitor mounting configuration to avoid harm to passengers in foreseeable collisions;
- (b) failing to include a reasonably designed television monitor mounting configuration for use by intended users;
- (c) failing to reasonably and properly test and/or analyze the testing of the PREVOST coach under reasonably foreseeable circumstances;
- (d) failing to take necessary steps to modify, retrofit and/or recall the PREVOST coach to include a safely designed television monitor mounting configuration that would not pose risks of injury which were inherent in the vehicle in question;
- (e) failing to adequately instruct or warn passengers, operators, owners, and other vehicle occupants about the foreseeable dangers inherent in the design of the television monitor mounting configuration, as well as the steps that could be taken to minimize the harm incurred during a roof crush accident;
- (f) failing to use due care under the circumstances;
- (g) failing to design the vehicle in accordance with the state of the art;
- (h) failing to design the roof supports so that the roof collapse would not invade the passenger compartment as it did in this accident, thus reducing the potential seriousness of injuries to passengers; and
- (i) such other acts or omissions constituting carelessness, negligence, gross negligence, wantonness and reckless disregard of safety as may appear during the course of discovery procedures or which may be adduced at trial of this case.



189. Because of the misconduct of the PREVOST defendants, and the unsafe design of the PREVOST coach, the defendants breached a duty it owed to passengers, and increased the risk of harm and injury to the Plaintiffs.

190. As a direct and proximate result of the negligent acts of the PREVOST defendants, Plaintiffs suffered the severe injuries outlined above.

WHEREFORE, Plaintiffs demand judgment against Defendants in an amount in excess of the amount requiring compulsory arbitration.

**COUNT V**  
**STRICT LIABILITY AS TO DEFENDANTS PREVOST**

191. Plaintiffs hereby incorporate the preceding and subsequent paragraphs as if fully set forth herein.

192. At all relevant times, the PREVOST defendants were engaged in the business of designing, testing, manufacturing, assembling, labeling, marketing, distributing and/or selling to American consumers and the Massachusetts citizenry motor coaches, including the 1996 PREVOST coach at issue in this case. The subject PREVOST coach was marketed, sold, distributed and used in the Commonwealth of Massachusetts and Suffolk County.

193. The PREVOST coach was expected to and did reach users including Plaintiffs without substantial change in the condition in which it was designed, manufactured, assembled, distributed, sold, rented, leased and/or supplied.

194. Plaintiffs aver that the PREVOST defendants, through their agents, servants, workmen, and/or employees are strictly liable under the law because:

- (e) The PREVOST coach was defective, unsafe, and not crashworthy;
- (f) The PREVOST coach was unreasonably dangerous;
- (g) The PREVOST coach was not safe for its intended use and purpose in the

common carrier industry;

- (h) The PREVOST coach lacked the necessary safety features to make it safe for its intended use and purpose so that it could be operated in a safe manner;
- (e) The PREVOST coach could have been designed more safely;
- (f) The PREVOST coach was designed, assembled, manufactured, sold, supplied and/or distributed without adequate warnings;
- (o) The PREVOST coach's interior configuration and, in particular, the television monitors, created an unreasonable danger to passengers when alternatives designs were readily available;
- (p) The PREVOST coach was offered for sale and marketed with unreasonably dangerous instructional/warning messages so that the ordinary consumer was uninformed of the safety risks posed by the interior configuration of the coach and, in particular, the television monitors;
- (q) The PREVOST coach was offered for sale and marketed without adequately placed and worded instructional/warning messages to fairly and safely alert the traveling public to the dangers associated with the television monitor configuration;
- (r) THE PREVOST DEFENDANTS violated State, Local and/or industry standards;
- (s) THE PREVOST DEFENDANTS failed to adequately and properly test the effect of a roof collapse collision on passengers;
- (t) The PREVOST DEFENDANTS failed to design the roof supports so that the roof collapse would not invade the passenger compartment as it did in this accident, thus reducing the potential seriousness of injuries to passengers;
- (u) THE PREVOST DEFENDANTS willfully and wantonly failed to take steps to make the PREVOST coach safe for its intended use and purpose in an attempt to reduce production costs and increase Defendants' profits; and

- (v) THE PREVOST DEFENDANTS acted in disregard of a foreseeable and foreseen risk that individuals would be injured while passengers on the PREVOST coach during roof collapse accidents.

195. Because of the defective design, manufacture, and production of the aforementioned aspects, components, and systems of the PREVOST coach, it was inherently dangerous in the event of a foreseeable collision and, as a result, the vehicle was unreasonably dangerous and should not have been placed into the stream of commerce without design and/or installation modification.

196. As a direct and proximate result of the defective design, marketing and manufacture of the PREVOST coach, as well as other errors and omissions described below, Plaintiffs were caused to sustain the serious injuries outlined above.

WHEREFORE, Plaintiffs demand judgment against Defendants in an amount in excess of the amount requiring compulsory arbitration.

**COUNT VI**  
**BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY AS TO**  
**DEFENDANTS TOMTOM**

197. Plaintiffs hereby incorporate the preceding and subsequent paragraphs as if fully set forth herein.

198. At all relevant times, the TOMTOM defendants were engaged in the business of designing, testing, manufacturing, assembling, labeling, marketing, distributing and/or selling to American consumers and the Massachusetts citizenry automotive navigation systems (frequently referred to as "GPS systems"), including the TOMTOM XLN14644 that was being used by Defendant JACKSON in the PREVOST coach at the time of the incident which is the subject of this lawsuit. The subject TOMTOM GPS was marketed, sold, distributed and used in the Commonwealth of Massachusetts and Suffolk County.

199. The TOMTOM GPS was expected to and did reach users including Defendant JACKSON without substantial change in the condition in which it was designed, manufactured, assembled, distributed, sold, rented, leased and/or supplied.

200. In promoting, selling, supplying, and delivering the TOMTOM GPS in question, the TOMTOM defendants expressly and impliedly warranted that the TOMTOM GPS was merchantable, fit and safe for the ordinary and foreseeable purposes for which it was sold.

201. The Defendants breached these implied warranties by delivering and/or supplying the TOMTOM GPS in an unsafe, defective and unfit condition.

202. The resulting injuries to Plaintiffs, and other damages described herein were the proximate result of the TOMTOM defendants' breach of warranties.

203. Plaintiffs aver that the TOMTOM defendants, through their agents, servants, workmen, and/or employees are liable for breaching the implied warranty of merchantability under the law because:

- (a) The TOMTOM GPS was defective and unsafe;
- (b) The TOMTOM GPS was unreasonably dangerous;
- (c) The TOMTOM GPS was not safe for its intended use;
- (d) The TOMTOM GPS lacked the necessary safety features to make it safe for its intended use and purpose so that it could be operated in a safe manner;
- (e) The TOMTOM GPS failed to provide a platform allowing the vehicle operator to enter the vehicle's height thus permitting the TOMTOM GPS to formulate a route avoiding all roadways with height restrictions;
- (f) The TOMTOM GPS could have been designed more safely;
- (g) The TOMTOM GPS was designed, assembled, manufactured, sold, supplied and/or distributed without adequate warnings;

- (h) The TOMTOM GPS failed to warn that it was not for use with commercial vehicles, including buses and motor coaches;
- (i) The TOMTOM GPS was offered for sale and marketed with unreasonably dangerous instructional/warning messages so that the ordinary consumer was uninformed of the safety risks posed by height restrictions on roadways;
- (j) THE TOMTOM DEFENDANTS violated State, Local and/or industry standards;
- (k) THE TOMTOM DEFENDANTS willfully and wantonly failed to take steps to make the TOMTOM GPS safe for its intended use and purpose in an attempt to reduce production costs and increase Defendants' profits; and
- (l) THE TOMTOM DEFENDANTS acted in disregard of a foreseeable and foreseen risk of serious injury to passengers in vehicles who were sent on roadways with height restrictions at the direction of the TOMTOM GPS devices.

204. Because of the defective design, manufacture, and production of the aforementioned aspects, components, and systems of the TOMTOM GPS, it was inherently dangerous in its use by a commercial vehicle operator of a vehicle subject to height restrictions and should not have been placed into the stream of commerce without design and/or installation modification.

205. As a direct and proximate result of the defective design, marketing and manufacture of the TOMTOM GPS, as well as other errors and omissions described below, Plaintiffs were caused to sustain the serious injuries outlined above.

WHEREFORE, Plaintiffs demand judgment against Defendants in an amount in excess of the amount requiring compulsory arbitration.

**COUNT VII**  
**NEGLIGENCE AS TO DEFENDANTS TOMTOM**

206. Plaintiffs hereby incorporate the preceding and subsequent paragraphs as if fully set forth herein.

207. The TOMTOM defendants are also liable to Plaintiffs for negligence and gross negligence in general and specifically for the following acts and omissions:

- (a) failing to include a reasonable warning system in the TOMTOM GPS to alert drivers of roadway height restrictions;
- (b) failing to include a reasonably designed the TOMTOM GPS to include a platform to allow drivers to enter their vehicle height prior to beginning a trip;
- (c) failing to reasonably and properly test and/or analyze the testing of the TOMTOM GPS under reasonably foreseeable circumstances;
- (d) failing to adequately instruct or warn passengers, operators, owners, and other vehicle occupants about the foreseeable dangers inherent in the design of a GPS system that does not account for a vehicles height despite the existence of known height restrictions on roadways;
- (e) failing to use due care under the circumstances;
- (f) violating federal standards, regulations, statutes and/or industry standards pertaining to the obligation of a GPS manufacturer to recall and make modifications after the manufacturer learns or should have learned of a defective feature in its device;
- (g) failing to retrofit the device despite knowledge of the ongoing problem of GPS device directions and bridge and/or overpass collisions;
- (h) failing to design the vehicle in accordance with the state of the art; and
- (i) such other acts or omissions constituting carelessness, negligence, gross negligence, wantonness and reckless disregard of safety as may appear during the course of discovery procedures or which may be adduced at trial of this case.

208. Because of the misconduct of the TOMTOM defendants, and the unsafe design of the TOMTOM GPS, the defendants breached a duty it owed to passengers, and increased the risk of harm and injury to the Plaintiffs.



209. As a direct and proximate result of the negligent acts of the TOMTOM defendants, Plaintiffs suffered the severe injuries outlined above.

WHEREFORE, Plaintiffs demand judgment against Defendants in an amount in excess of the amount requiring compulsory arbitration.

**COUNT VIII**  
**STRICT LIABILITY AS TO DEFENDANTS TOMTOM**

210. Plaintiffs hereby incorporate the preceding and subsequent paragraphs as if fully set forth herein.

211. At all relevant times, the TOMTOM defendants were engaged in the business of designing, testing, manufacturing, assembling, labeling, marketing, distributing and/or selling to American consumers and the Massachusetts citizenry automotive navigation systems (frequently referred to as “GPS systems”), including the TOMTOM XLN14644 that was being used by Defendant JACKSON in the PREVOST coach at the time of the incident which is the subject of this lawsuit. The subject TOMTOM GPS was marketed, sold, distributed and used in the Commonwealth of Massachusetts and Suffolk County.

212. The TOMTOM GPS was expected to and did reach users including Defendant JACKSON without substantial change in the condition in which it was designed, manufactured, assembled, distributed, sold, rented, leased and/or supplied.

213. Plaintiffs aver that the TOMTOM defendants, through their agents, servants, workmen, and/or employees are strictly liability under the law because:

- (a) The TOMTOM GPS was defective and unsafe;
- (f) The TOMTOM GPS was unreasonably dangerous;
- (g) The TOMTOM GPS was not safe for its intended use;

- (h) The TOMTOM GPS lacked the necessary safety features to make it safe for its intended use and purpose so that it could be operated in a safe manner;
- (i) The TOMTOM GPS failed to provide a platform allowing the vehicle operator to enter the vehicle's height thus permitting the TOMTOM GPS to formulate a route avoiding all roadways with height restrictions;
- (f) The TOMTOM GPS could have been designed more safely;
- (g) The TOMTOM GPS was designed, assembled, manufactured, sold, supplied and/or distributed without adequate warnings;
- (m) The TOMTOM GPS failed to warn that it was not for use with commercial vehicles, including buses and motor coaches;
- (n) The TOMTOM GPS was offered for sale and marketed with unreasonably dangerous instructional/warning messages so that the ordinary consumer was uninformed of the safety risks posed by height restrictions on roadways;
- (o) THE TOMTOM DEFENDANTS violated State, Local and/or industry standards;
- (p) THE TOMTOM DEFENDANTS willfully and wantonly failed to take steps to make the TOMTOM GPS safe for its intended use and purpose in an attempt to reduce production costs and increase Defendants' profits; and
- (q) THE TOMTOM DEFENDANTS acted in disregard of a foreseeable and foreseen risk of serious injury to passengers in vehicles who were sent on roadways with height restrictions at the direction of the TOMTOM GPS devices.

214. Because of the defective design, manufacture, and production of the aforementioned aspects, components, and systems of the TOMTOM GPS, it was inherently dangerous in its use by a commercial vehicle operator of a vehicle subject to height restrictions and should not have been placed into the stream of commerce without design and/or installation modification.

215. As a direct and proximate result of the defective design, marketing and manufacture of the TOMTOM GPS, as well as other errors and omissions described below, Plaintiffs were caused to sustain the serious injuries outlined above.

WHEREFORE, Plaintiffs demand judgment against Defendants in an amount in excess of the amount requiring compulsory arbitration.

**COUNT IX**  
**BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY AS TO**  
**DEFENDANTS GARMIN**

216. Plaintiffs hereby incorporate the preceding and subsequent paragraphs as if fully set forth herein.

217. At all relevant times, the GARMIN defendants were engaged in the business of designing, testing, manufacturing, assembling, labeling, marketing, distributing and/or selling to American consumers and the Massachusetts citizenry automotive navigation systems (frequently referred to as “GPS systems”), including the Garmin Nuvi 50 LM that was being used by Defendant JACKSON in the PREVOST coach at the time of the incident which is the subject of this lawsuit. The subject GARMIN GPS was marketed, sold, distributed and used in the Commonwealth of Massachusetts and Suffolk County.

218. The GARMIN GPS was expected to and did reach users including Defendant JACKSON without substantial change in the condition in which it was designed, manufactured, assembled, distributed, sold, rented, leased and/or supplied.

219. In promoting, selling, supplying, and delivering the GARMIN GPS in question, the GARMIN defendants expressly and impliedly warranted that the GARMIN GPS was merchantable, fit and safe for the ordinary and foreseeable purposes for which it was sold.

220. The Defendants breached these implied warranties by delivering and/or supplying the GARMIN GPS in an unsafe, defective and unfit condition.

221. The resulting injuries to Plaintiffs, and other damages described herein were the proximate result of the GARMIN defendants' breach of warranties.

222. Plaintiffs aver that the GARMIN defendants, through their agents, servants, workmen, and/or employees are liable for breaching the implied warranty of merchantability under the law because:

- (a) The GARMIN GPS was defective and unsafe;
- (b) The GARMIN GPS was unreasonably dangerous;
- (c) The GARMIN GPS was not safe for its intended use;
- (d) The GARMIN GPS lacked the necessary safety features to make it safe for its intended use and purpose so that it could be operated in a safe manner;
- (e) The GARMIN GPS failed to provide a platform allowing the vehicle operator to enter the vehicle's height thus permitting the GARMIN GPS to formulate a route avoiding all roadways with height restrictions;
- (f) The GARMIN GPS could have been designed more safely;
- (g) The GARMIN GPS was designed, assembled, manufactured, sold, supplied and/or distributed without adequate warnings;
- (i) The GARMIN GPS failed to warn that it was not for use with commercial vehicles, including buses and motor coaches;
- (j) The GARMIN GPS was offered for sale and marketed with unreasonably dangerous instructional/warning messages so that the ordinary consumer was uninformed of the safety risks posed by height restrictions on roadways;
- (k) THE GARMIN DEFENDANTS violated State, Local and/or industry standards;
- (l) THE GARMIN DEFENDANTS willfully and wantonly failed to take steps to make the GARMIN GPS safe for its intended use and purpose in

an attempt to reduce production costs and increase Defendants' profits;  
and

- (m) THE GARMIN DEFENDANTS acted in disregard of a foreseeable and foreseen risk of serious injury to passengers in vehicles who were sent on roadways with height restrictions at the direction of the GARMIN GPS devices.

223. Because of the defective design, manufacture, and production of the aforementioned aspects, components, and systems of the GARMIN GPS, it was inherently dangerous in its use by a commercial vehicle operator of a vehicle subject to height restrictions and should not have been placed into the stream of commerce without design and/or installation modification.

224. As a direct and proximate result of the defective design, marketing and manufacture of the GARMIN GPS, as well as other errors and omissions described below, Plaintiffs were caused to sustain the serious injuries outlined above.

WHEREFORE, Plaintiffs demand judgment against Defendants in an amount in excess of the amount requiring compulsory arbitration.

**COUNT X**  
**NEGLIGENCE AS TO DEFENDANTS GARMIN**

225. Plaintiffs hereby incorporate the preceding and subsequent paragraphs as if fully set forth herein.

226. The GARMIN defendants are also liable to Plaintiffs for negligence and gross negligence in general and specifically for the following omissions:

- (a) failing to include a reasonable warning system in the GARMIN GPS to alert drivers of roadway height restrictions;
- (b) failing to include a reasonably designed the GARMIN GPS to include a platform to allow drivers to enter their vehicle height prior to beginning a trip;

- (c) failing to reasonably and properly test and/or analyze the testing of the GARMIN GPS under reasonably foreseeable circumstances;
- (d) failing to adequately instruct or warn passengers, operators, owners, and other vehicle occupants about the foreseeable dangers inherent in the design of a GPS system that does not account for a vehicles height despite the existence of known height restrictions on roadways;
- (e) failing to use due care under the circumstances;
- (f) violating federal standards, regulations, statutes and/or industry standards pertaining to the obligation of a GPS manufacturer to recall and make modifications after the manufacturer learns or should have learned of a defective feature in its device;
- (g) failing to retrofit the device despite knowledge of the ongoing problem of GPS device directions and bridge and/or overpass collisions;
- (h) failing to design the vehicle in accordance with the state of the art; and
- (i) such other acts or omissions constituting carelessness, negligence, gross negligence, wantonness and reckless disregard of safety as may appear during the course of discovery procedures or which may be adduced at trial of this case.

227. Because of the misconduct of the GARMIN defendants, and the unsafe design of the GARMIN GPS, the defendants breached a duty it owed to passengers, and increased the risk of harm and injury to the Plaintiffs.

228. As a direct and proximate result of the negligent acts of the GARMIN defendants, Plaintiffs suffered the severe injuries outlined above.

WHEREFORE, Plaintiffs demand judgment against Defendants in an amount in excess of the amount requiring compulsory arbitration.

**COUNT XI**  
**STRICT LIABILITY AS TO DEFENDANTS TOMTOM**

229. Plaintiffs hereby incorporate the preceding and subsequent paragraphs as if fully set forth herein.



230. At all relevant times, the GARMIN defendants were engaged in the business of designing, testing, manufacturing, assembling, labeling, marketing, distributing and/or selling to American consumers and the Massachusetts citizenry automotive navigation systems (frequently referred to as “GPS systems”), including the Garmin Nuvi 50 LM that was being used by Defendant JACKSON in the PREVOST coach at the time of the incident which is the subject of this lawsuit. The subject GARMIN GPS was marketed, sold, distributed and used in the Commonwealth of Massachusetts and Suffolk County.

231. The GARMIN GPS was expected to and did reach users including Defendant JACKSON without substantial change in the condition in which it was designed, manufactured, assembled, distributed, sold, rented, leased and/or supplied.

232. Plaintiffs aver that the GARMIN defendants, through their agents, servants, workmen, and/or employees are strictly liable under the law because:

- (a) The GARMIN GPS was defective and unsafe;
- (b) The GARMIN GPS was unreasonably dangerous;
- (c) The GARMIN GPS was not safe for its intended use;
- (d) The GARMIN GPS lacked the necessary safety features to make it safe for its intended use and purpose so that it could be operated in a safe manner;
- (e) The GARMIN GPS failed to provide a platform allowing the vehicle operator to enter the vehicle’s height thus permitting the GARMIN GPS to formulate a route avoiding all roadways with height restrictions;
- (f) The GARMIN GPS could have been designed more safely;
- (g) The GARMIN GPS was designed, assembled, manufactured, sold, supplied and/or distributed without adequate warnings;
- (h) The GARMIN GPS failed to warn that it was not for use with commercial vehicles, including buses and motor coaches;

- (i) The GARMIN GPS was offered for sale and marketed with unreasonably dangerous instructional/warning messages so that the ordinary consumer was uninformed of the safety risks posed by height restrictions on roadways;
- (j) THE GARMIN DEFENDANTS violated State, Local and/or industry standards;
- (k) THE GARMIN DEFENDANTS willfully and wantonly failed to take steps to make the GARMIN GPS safe for its intended use and purpose in an attempt to reduce production costs and increase Defendants' profits; and
- (l) THE GARMIN DEFENDANTS acted in disregard of a foreseeable and foreseen risk of serious injury to passengers in vehicles who were sent on roadways with height restrictions at the direction of the GARMIN GPS devices.

233. Because of the defective design, manufacture, and production of the aforementioned aspects, components, and systems of the GARMIN GPS, it was inherently dangerous in its use by a commercial vehicle operator of a vehicle subject to height restrictions and should not have been placed into the stream of commerce without design and/or installation modification.

234. As a direct and proximate result of the defective design, marketing and manufacture of the GARMIN GPS, as well as other errors and omissions described below, Plaintiffs were caused to sustain the serious injuries outlined above.

WHEREFORE, Plaintiffs demand judgment against Defendants in an amount in excess of the amount requiring compulsory arbitration.

**COUNT XII**  
**NEGLIGENCE AS TO DEFENDANT COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF CONSERVATION AND RECREATION ("MASS DCR")**

234. Plaintiffs hereby incorporate the preceding and subsequent paragraphs as if fully set forth herein.

235. The roadway, highway, street, shoulder and/or guiderail of Soldiers Field Road, in Boston Massachusetts, were controlled, maintained, designed and/or possessed by defendant, **“Mass DCR.”**

236. On February 25, 2013 the plaintiffs, through counsel, timely served on Mass DCR, a notice letter pursuant to G.L. c. 184, §§ 18-19. The Mass DCR denied the claim on March 5, 2013.

237. The roadway, highway, street, shoulder and/or signage involved in the aforementioned accident were negligently designed and/or maintained of which Mass DCR had notice and failed to correct. The negligence of Mass DCR included, but is not limited to, the following:

- (a) sub-standard maintenance and selection of signage in violation of the applicable laws of the Commonwealth of Massachusetts;
- (b) improper selection of signage and posting of vehicle height limits on Soldiers Field Road;
- (c) improper roadway design of Soldiers Field Road;
- (d) lack of proper maintenance of the roadway and signage located at Soldiers Field Road, Boston, MA;
- (e) improper repair and maintenance of the height restriction signs in the area involved in this accident;

238. Because of the misconduct of the Defendant Mass DCR, and the unsafe design and maintenance of the height restriction signage on Soldiers Field Road, Defendant Mass DCR breached a duty it owed to travelers on its roadways, and increased the risk of harm and injury to the Plaintiffs.

239. As a direct and proximate result of the negligent acts of Defendant Mass DCR, Plaintiffs suffered the severe injuries outlined above.

WHEREFORE, Plaintiffs demand judgment against Defendant in an amount in excess of the amount requiring compulsory arbitration.

**GLOBAL PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs demand a jury trial on all issues so triable, and judgment against each Defendant and every one of them for the Plaintiff including, but not limited to: (a) medical and hospital expenses of the Plaintiff; (b) pain and suffering; (c) loss of Plaintiff's earnings for the balance of his lifetime; (d) all recoverable interest; (g) any other relief to which Plaintiff may be legally or equitably entitled; and (h) punitive damages.

**PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS.**

Respectfully submitted,

**Kreindler & Kreindler LLP**

Dated: January 23, 2015

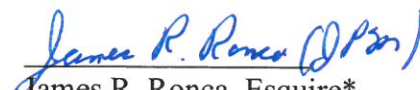
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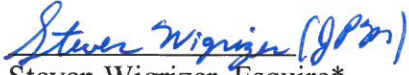
  
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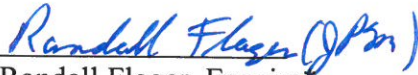
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