

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
IVY ENGLISH and LARRY LAY,

Plaintiffs,

-against-

VOIGT & SCHWEITZER INC., VOIGT &
SCHWEITZER LLC and HERNANDEZ GUSTANO,

Defendants.
-----X

Index No.: _____

VERIFIED COMPLAINT

PLAINTIFF DEMANDS
TRIAL BY JURY

Plaintiffs, IVY ENGLISH and LARRY LAY, by their attorney, LAW OFFICE OF
TODD J. KROUNER, complaining of the defendants, respectfully allege upon information and
belief as follows:

1. Plaintiffs, IVY ENGLISH and LARRY LAY, reside at 1965 Lafayette Avenue,
Bronx, New York 10473.
2. Plaintiff, IVY ENGLISH, was the registered owner and operator, of a 1999 Acura
bearing New York license plate number A87 ONJ (hereinafter referred to as the “English
Vehicle”).
3. Defendant, VOIGT & SCHWEITZER INC., was a foreign business corporation.
4. Defendant, VOIGT & SCHWEITZER INC., changed its name to VOIGT &
SCHWEITZER LLC on or about July 7, 2009, and now operates as VOIGT & SCHWEITZER
LLC.
5. Defendant, VOIGT & SCHWEITZER LLC, is a foreign business corporation.
6. Defendant, VOIGT & SCHWEITZER INC., regularly and systematically
conducted business in the State of New York.

7. Defendant, VOIGT & SCHWEITZER INC., was the registered owner of a 2000 truck bearing Ohio license plate number PVK 6141 (hereinafter referred to as the “Voigt Truck”).

8. Defendant, HERNANDEZ GUSTANO, resides at 713 Catherine Street, Perth Amboy, New Jersey 08861.

9. Upon information and belief, VOIGT & SCHWEITZER LLC is successor to VOIGT & SCHWEITZER INC., and is therefore liable for the actions complained of herein. Defendants VOIGHT & SCHWEITZER INC. and VOIGT & SCHWEITZER LLC hereinafter are referred to collectively as VOIGHT & SCHWEITZER.

10. Defendant, HERNANDEZ GUSTANO, was an employee of VOIGT & SCHWEITZER.

11. Defendant, HERNANDEZ GUSTANO, was an Independent Contractor of VOIGT & SCHWEITZER.

12. On June 12, 2009, plaintiff, IVY ENGLISH, was driving, operating and controlling the English Vehicle, traveling east bound on the Cross Bronx Expressway, in Bronx County, State of New York.

13. On June 12, 2009, defendant, HERNANDEZ GUSTANO, was driving, operating and controlling the Voigt Truck, traveling east bound on the Cross Bronx Expressway, in Bronx County, State of New York.

14. On June 12, 2009, defendant, HERNANDEZ GUSTANO, was driving, operating and controlling the Voigt Truck with the knowledge, permission, consent and at the direction of defendant VOIGT & SCHWEITZER.

AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF IVY ENGLISH AND
AS AGAINST DEFENDANTS
VOIGT & SCHWEITZER and HERNANDEZ GUSTANO

15. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in paragraphs numbered "1" through "14" with the same force and effect as if set forth more fully herein.

16. On June 12, 2009, at approximately 6 a.m., while traveling east bound on the Cross Bronx Expressway, near the intersection of Third Avenue, in Bronx County, State of New York, defendant HERNANDEZ GUSTANO did cause the Voigt Truck to collide with the rear of the English Vehicle.

17. That said contact was the result of the negligence, carelessness and recklessness of the defendants VOIGT & SCHWEITZER and/or HERNANDEZ GUSTANO in the ownership, operation, maintenance, repair and control of the aforementioned vehicle, and consisted of, among other things: driving and operating the aforesaid vehicle without observing and heeding the conditions then and there existing; operating the vehicle at an unsafe and excessive rate of speed for the conditions then and there prevailing; in operating and maintaining said vehicle in a manner which violated the applicable statutes, rules, regulations and ordinances of the State of New York, County of Bronx; operating and maintaining said vehicle in a manner which violated the applicable federal statutes, rules, regulations and ordinances applicable to an interstate carrier; in failing to properly operate and control the vehicle; in failing to keep a proper lookout ahead and to the side of the vehicle; in allowing the vehicle to be operated by an inexperienced and incapable driver; in failing to properly use the braking and steering mechanisms of said vehicle; in negligently coming into contact and collision with plaintiffs'

motor vehicle; and in failing to take each and every reasonable precaution to protect the plaintiff from the injuries herein. Plaintiffs rely upon the theories of vicarious liability and *respondeat superior*.

18. As a result of the foregoing contact, plaintiff IVY ENGLISH sustained serious personal injuries as defined in Subdivision (d) of Section 5102 of the Insurance Law, and/or economic loss greater than basic economic loss as defined in Subdivision (a) of Section 5102 of the Insurance Law; has necessarily extended or incurred, or will be obligated to pay, large sums of money for medical care and attention; was disabled from his usual duties and occupation; has lost and will continue to lose income thereby; and was otherwise injured.

19. That said occurrence and injuries to plaintiff IVY ENGLISH were caused solely by reason of the negligence of the defendant herein and without any negligence on the part of plaintiff contributing hereto.

20. That plaintiff's right to recover for said non-economic losses is not impeded, limited or otherwise affected by Article 16 of the Civil Practice Law and Rules of the State of New York because the instant cause of action is specifically excluded from coverage under that article by CPLR 1602(6).

21. The amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF LARRY LAY AND
AS AGAINST DEFENDANTS
VOIGT & SCHWEITZER and HERNANDEZ GUSTANO

22. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in paragraphs numbered "1" through "21" with the same force and effect as if set forth more fully herein.

23. Plaintiff LARRY LAY was, and still is, husband of plaintiff IVY ENGLISH and as such, they duly reside and live together as husband and wife.

24. As a result of the foregoing occurrence and resulting injuries to his wife as afore stated, plaintiff LARRY LAY has been deprived of the services, society, support, companionship and consortium of his wife, IVY ENGLISH, and such loss in continuing into the future, all to his damage.

WHEREFORE, plaintiffs IVY ENGLISH and LARRY LAY demand judgment against the defendants on the First and Second Causes of Action in such sums as a jury may find fair, reasonable and just, all together with interest, costs and disbursements of this action.

Dated: Pleasantville, New York
February 16, 2010

Yours, etc.
LAW OFFICE OF TODD J. KROUNER

By: 

Todd J. Krouner
Diana M. Carlino
Attorneys for Plaintiff
140 Bedford Road
Pleasantville, New York 10570
(914) 769-8700

To: Voigt & Schweitzer Inc.
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1300 East Ninth Street
Cleveland, OH 44114

Voigt & Schweitzer LLC
c/o Ct Corporation System
1300 East Ninth Street
Cleveland, OH 44114

Hernandez Gustano
713 Catherine Street
Perth Amboy, NJ 08861

ATTORNEY VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

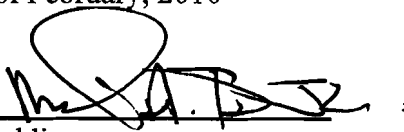
DIANA M. CARLINO, being duly sworn, deposes and says:

That I am an Associate of the Law Office of Todd J. Krouner with an office at 140 Bedford Rd., Pleasantville, New York 10570, attorneys for plaintiffs in the within action; that deponent has read and knows the contents of the foregoing Verified Complaint and the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, she believes it to be true. Deponent further says that the reason this verification is made by deponent and not by plaintiffs is that the said plaintiffs are not within the county wherein deponent maintains his offices.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.


DIANA M. CARLINO

Sworn to before me this 16th
day of February, 2010



Notary Public

MICHAEL A. TESTA, JR.
Notary Public, State of New York
No. 01TE6035072
Qualified in Dutchess County
Commission Expires December 20, 2013