

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ESTATE OF STEPHEN PAUL BOOHER;
GLADYS F. BOOHER, Administrator; and
GLADYS F. BOOHER, Individually,

Plaintiffs,

v.

STUART R. GLEN,

Defendant.

Case No. 4:17-cv-119

(Polk County No. LACL137365)

NOTICE OF REMOVAL

Defendant Stuart R. Glen (“Glen”), by and through his undersigned counsel, hereby gives notice of the removal of this action pursuant to 28 U.S.C. § 1441(a) and Local Rule 81. For his short and plain statement of the grounds for removal, Glen states as follows:

A. In this action, complete diversity exists and the amount in controversy exceeds \$75,000. Plaintiffs are citizens of South Dakota. Glen is a citizen of Texas. Removal is in accordance with 28 U.S.C. § 1441(a), as this Court would have had diversity jurisdiction over this action under 28 U.S.C. § 1332(a), had plaintiffs filed the Petition with this Court. In accordance with 28 U.S.C. § 1446(b), Glen timely filed this Notice of Removal within 30 days of receipt of service of Petition of plaintiffs.

B. Pursuant to 28 U.S.C. § 1441(a) and Local Rule 81.a.1, Glen is required to provide this Court with copies of all process, pleadings, and Orders filed in the State case. Glen has reviewed the state court's electronic docket and determined that the following pleadings have been filed:

- Petition and Jury Demand (filed 3/10/2017)
- Affidavit of Compliance with attached Notices (filed 3/20/2017)
- Affidavit of Mailing (filed 3/20/2017)

C. For its statement of facts pursuant to Local Rule 81.a.4, demonstrating the jurisdictional requirements for removal, Glen states as follows:

INTRODUCTION

1. On March 10, 2017, Plaintiffs commenced this action with the filing of the Petition in the Iowa District Court for Polk County, Iowa. Plaintiffs seek compensatory and punitive damages, costs and attorney fees, alleging breach of contract and bad faith.

2. On or about March 15, 2017, Glen was served via the Iowa Secretary of State. In accordance with 28 U.S.C. § 1448(b), Glen timely files this Notice of Removal within 30 days of its receipt of service.

3. Under 28 U.S.C. § 1441(a), an action “of which the district courts of the United States have original jurisdiction” may be removed to federal court if it timely petition for removal is filed. Thus, the state court action may be removed to federal court if the federal court would have had diversity jurisdiction over the action under 28 U.S.C. § 1332(a) as of the time of the initial pleading and when the removal notice is filed. *Hatridge v. Aetna Cas. & Sur. Co.*, 415 F.2d. 809, 814 (8th Cir. 1969); *McKorkindale v. American Home Assurance Co.*, 909 F. Supp. 646, 650 (N.D. Iowa 1995). Plaintiffs could have filed the Petition with this Court as complete diversity of citizenship existed and the amount in controversy exceeds \$75,000.

COMPLETE DIVERSITY EXISTS AS TO ALL PARTIES

4. Plaintiff is a citizen of South Dakota (Petition, ¶ 1). Glen is a citizen of Texas (Petition, ¶ 4). Complete diversity is present in this case where a citizen of South Dakota has sued Glen, a citizen of Texas. *See* 28 U.S.C. § 1332(a)(1) (citizens of different states are diverse).

THE ACTUAL AMOUNT IN CONTROVERSY EXCEEDS \$75,000

5. The amount in controversy, under 28 U.S.C. § 1332, requires the sum or value of the lawsuit to exceed \$75,000 for the district court to have original jurisdiction. The amount in controversy is to be judged at the time of the removal by considering the claims of the named plaintiffs. *Kessler v. National Enterprises, Inc.*, 347 F.3d 1076, 1080 (8th Cir. 2003). The controlling issue is “not whether the damages are greater than the jurisdictional amount, but whether the fact finder might legally conclude they are.” *Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir. 2002). As set forth below, the true amount in controversy exceeds \$75,000 when Plaintiff’s damages are considered, including the demands for compensatory and punitive damages.

6. Compensatory damages demanded include loss of earning capacity, physical and mental pain and suffering, loss of spousal consortium, loss of parental consortium, and interest on reasonable burial expense. (Petition, ¶ 29). A factfinder could legally conclude the alleged damages claimed exceed the jurisdictional amount. *Hofmann v. Johnson & Johnson, Inc.*, No. C06-3083-MWB, 2007 WL 1455870 (N.D. Iowa May 18, 2007).

7. In addition to compensatory damages other related amounts, such as punitive damages, count toward the jurisdictional minimum needed to satisfy the diversity jurisdiction. *Crawford v. Hoffman-La Roche Ltd.*, 267 F.3d 760, 766 (8th Cir. 2001).

8. Glen reserves the right to amend and/or supplement this Notice of Removal.

WHEREFORE, the Defendant, Stuart R. Glen, hereby removes the above captioned case from the Iowa District Court for Polk County, bearing Case Number LACL137365 to the United States District Court for the Southern District of Iowa, Central Division.

Respectfully submitted,

Certificate of Service

The undersigned certifies that the foregoing instrument was served upon the parties to this action by serving a copy upon each of the attorneys listed as receiving notice on April 3, 2017 by CM/ECF.

/s/ Adam D. Zenor

Copy to:

Fred L. Dorr
Wasker, Dorr, Wimmer & Marcouiller, P.C.
4201 Westown Parkway, Suite 250
West Des Moines, Iowa 50266-6720
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Brian P. Galligan
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ATTORNEYS FOR PLAINTIFFS ESTATE OF STEPHEN
PAUL BOOHER, GLADYS F. BOOHER, Administrator,
and GLADYS F. BOOHER, Individually.

GREFE & SIDNEY, P.L.C.

By: /s/ Guy R. Cook
Guy R. Cook, AT0001623

By: /s/ Clark I. Mitchell
Clark I. Mitchell, AT0005354

By: /s/ Adam D. Zenor
Adam D. Zenor, AT0009698

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ATTORNEYS FOR DEFENDANT
STUART R. GLEN

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ESTATE OF STEPHEN PAUL BOOHER; GLADYS F. BOOHER, Administrator; and GLADYS F. BOOHER, Individually, Plaintiffs, v. STUART R. GLEN, Defendant.	Case No. 4:17-cv-119 DEFENDANT'S APPENDIX TO NOTICE OF REMOVAL
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Defendant Stuart R. Glen ("Glen"), attaches the following documents from Polk County, Iowa District Court Case Number LACL 137365 in support of his Notice of Removal:

<u>DOCUMENT</u>	<u>DOC. NO.</u>
Petition and Jury Demand	1
Affidavit of Compliance, with attachments: <ul style="list-style-type: none">- Notice of Filing- Secretary of State Service Notice- Certified Mail Return Receipt Requested Green Card	2
Affidavit of Mailing, with attachment: <ul style="list-style-type: none">- Certified Mail Return Receipt	3

Respectfully submitted,

GREFE & SIDNEY, P.L.C.

By: /s/ Guy R. Cook
Guy R. Cook, AT0001623

Certificate of Service
The undersigned certifies that the foregoing instrument was served upon the parties to this action by serving a copy upon each of the attorneys listed as receiving notice on April 3, 2017 by CM/ECF.

/s/ Adam D. Zenor

Copies to:

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By: /s/ Clark I. Mitchell
Clark I. Mitchell, AT0005354

By: /s/ Adam D. Zenor
Adam D. Zenor, AT0009698

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ATTORNEYS FOR DEFENDANT
STUART R. GLEN

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ESTATE OF STEPHEN PAUL BOOHER;)	
GLADYS F. BOOHER, Administrator,)	
AND GLADYS F. BOOHER, Individually,	)	Case No. _____
)	
Plaintiffs,	)	PETITION
	)	and
vs.	)	JURY DEMAND
)	
STUART R. GLEN,)	
Defendant.)	

COMES NOW Gladys F. Booher (“**Gladys**”) in her capacity as Administrator in the above-captioned case and individually, and for her petition naming Stuart R. Glen (“**Glen**”) as Defendant, states:

PARTIES

1. Plaintiff Gladys is an individual who resides in Sioux Falls, South Dakota. She brings this suit on behalf of the Estate of Stephen Paul Booher (“**Steve**” or “**Estate**”) and in her individual capacity.
2. Gladys and Steve were married on December 21, 1968, and continued in that martial relationship until Steve’s death on June 11, 2016, or some forty-seven (47) years.
3. Plaintiff Gladys and Steve have two adult children, Douglas Booher (“**Doug**”) and Michele Booher (“**Michele**”) who were 42 and 45 years old, respectively, at the time of their father’s death. Both Doug and Michele are married.

4. Defendant Glen is an individual whose current residence is [REDACTED]
[REDACTED] He was employed at all material times herein by Adventure Lands of America, Inc. (“**Adventureland**” or the “**Park**”), an Iowa corporation located in Altoona, Polk County, Iowa while residing in this state.
5. On June 7, 2016 while so employed by Adventureland, Glen was performing services as a ride operator on the “Raging River” ride (“**Ride**” or “**Raging River**”). On that same day, Steve, a co-employee of Glen was injured at Adventureland and later died.
6. The decedent, Steve, was hired as a seasonal employee of Adventureland starting May 7, 2016, with his first day of work being only a few days prior to his injury and later death.
7. At the time Steve was injured while working at Adventureland he was serving as a loading assistant on the Raging River ride.
8. He and his wife Gladys were residing in their RV (recreational vehicle) parked at the Adventureland Campground in Altoona, Polk County, Iowa, at all material times herein.

NATURE OF SUIT

9. This is an action for damages instituted by the Estate of Stephen Paul Booher, with Steve’s wife, Gladys, being authorized in the estate proceeding, as Administrator, to initiate this action on behalf of the estate. That estate proceeding is indentified in Polk County, Iowa District Court as Probate No. ESPR071161. Gladys also brings this suit in her individual capacity.

10. This proceeding is furthermore brought on behalf of the estate for the wrongful death of Steve seeking recovery of all loss and damage for those persons or that entity so entitled, occasioned by Steve's death.
11. Gladys is pursuing her pre-death lost consortium claim associated with her husband Steve's death, in her individual capacity.

VENUE

12. Venue is proper here as the estate and Gladys, individually, are making their wrongful death claims arising out of circumstances and events which occurred in this county.
13. The Plaintiff estate has a property interest capable of protection and assertion in Polk County, Iowa.

FACTS

14. The afternoon of June 7, 2016 Defendant Glen was the ride operator of the Raging River at Adventureland, while decedent, Stephen Paul Booher and Gary Reed ("Reed") served as two loading assistants helping Park patrons on and off that Ride.
15. Defendant Glen, prior to the events resulting in the death of Steve, had been trained and instructed by the Park to do all of the following as a ride operator of the Raging River ride:
 - a. Visually check the ride before starting the ride;
 - b. Watch the ride during the entire operation;
 - c. Always be on guard;
 - d. Keep your eyes on the ride while the ride is operating;
 - e. Know your role in handling an accident; be prepared to act professionally;
 - f. Consider all injuries as serious;
 - g. Stop the ride if an accident occurs while the ride is in motion;
 - h. Once the area is clear and boats are ready to dispatch say "clear" over the PA system and wait for the thumbs-up signal from both loading assistants;

- i. Once you have both thumbs-up then press the “start” button for conveyor 6 to launch boat into water. Note: The “clear” signal lets both the guests and the assistants know that the boats are about to move. Check to make sure that all guests are seated in next boat and press the “start” button for “conveyor 5” to advance boat “conveyor 6”. Check to make sure that all guests are loaded and seated and that the assistants are not standing on boat, then press the “start” button for “conveyor 4” to advance boat to “conveyor 5”. Check to make sure that all guests are seated in the next boat and press the “start” button for “conveyor 3” to advance boat to “conveyor 4”. Check to make sure that all guests are seated in the boats on “conveyor “2” and press the “start” button for “conveyor 2” to advance boats. Repeat process.
 - j. The “Auxiliary Emergency Stop” button will shut off all conveyors. The “Emergency Stop” button will shut off all conveyors.
 - k. In case of emergencies, press the “Auxiliary Emergency Stop” and the “Emergency Stop” and call the operator immediately.
16. In addition, the ride operator’s control board has the following language prominently displayed on its face: “Operators: You must have thumbs up from the assistants before moving any boats.”
17. Despite the foregoing training and admonitions, Glen failed to act to avoid injury and death to Steve and resulting loss to his estate and family.

DEFENDANT GLEN’S GROSS NEGLIGENCE

18. On June 7, 2016, the date of the incident which caused the Plaintiff Estate’s and Gladys’ individual injuries, Defendant Glen was acting in the course and scope of his employment at Adventureland as was Steve, his co-employee.
19. Furthermore, at the time of the incident which is the subject of this suit, Defendant Glen acted in a grossly negligent manner towards Steve, as follows:
- a. He failed to visually check the Raging River ride before starting it;
 - b. He failed to watch the ride during its entire operation;
 - c. He failed to be on guard;

- d. He failed to know his role in handling the incident involving Steve;
- e. He failed to stop the ride once he became aware of the incident involving Steve and Reed, the loading assistants, which had knocked them both off their feet due to his reckless, unexpected, wanton and premature ride start;
- f. He failed to assure himself that ride loading assistants were not standing on any boat, pre-start;
- g. He started the ride without first obtaining the required thumbs-up signal from Steve and Reed;
- h. He failed to follow the instructions prominently displayed on the ride control board located directly in front of him which warned him to first obtain a thumbs-up from loading assistant before moving any boats;
- i. He left the operator's station within clear visual range of the fallen loading assistants, without shutting down the ride;
- j. He failed to engage the oversized, red "E-Stop Aux." knob located immediately in front of him, after he was aware both loading assistants were down and the ride was still running;
- k. He failed to key the ride to the "off" position after becoming aware that the loading assistants had been jerked off their feet due to his premature start of the ride, allowing the ride to continue operating;
- l. From his operator's platform above and in close proximity to the ride and the loading assistants, he could easily observe that Steve had been knocked down onto the moving ride belts and was being pulled by continuous belt action into the confluence of a ride boat and the abutting Raging River concrete sidewall where Steve's head and body were brought into continuous and repeated contact with that sidewall, yet failed to stop the ride and instead, left his station;
- m. Defendant Glen only returned to his operator's station and stopped the ride after several ride patrons, waiting to board, repeatedly yelled at him to "stop the ride";
- n. Glen admitted that he caused the assistants to topple onto the exposed ride conveyor belts; and,
- o. Glen failed to consider Steve's injury, once he was knocked down onto the ride conveyor belts, as serious, and treat it accordingly.

20. Steve was taken by ambulance to Mercy Medical Center (Main) ("**Mercy**") in Des Moines, Iowa where he was admitted on June 7, 2016 at 5:52 p.m.

21. Steve remained at Mercy until his death on June 11, 2016 at approximately 4:53 p.m.

22. Steve's immediate cause of death was determined on June 15, 2016, by Dr. Gregory A. Schmunk, the Polk County Iowa Chief Medical Examiner, as craniocerebral trauma (i.e., trauma to the skull and brain). A State of Iowa "Certificate of Death" was issued evidencing Dr. Schmunk's cause of death determination.
23. Defendant Glen's conduct constitutes a reckless and wanton disregard for the rights of Steve, as a co-employee, and/or was the result of conscious indifference to the rights, welfare and safety of Steve, a fellow employee. Accordingly, Defendant Glen was grossly negligent.
24. Defendant Glenn's gross negligence was a proximate cause of the death of Steve and the Plaintiff Estate's and Gladys' individual damages.
25. Defendant Glen's gross negligence constituted a willful and wanton disregard of the rights, welfare and safety of Steve, causing actual damage to him, his wife, Gladys, and his estate. The Plaintiff Estate and Gladys, individually, are therefore entitled to recover punitive damages from Defendant Glen.

DAMAGES TO DECEDENT/ESTATE

26. As a direct and proximate result of Defendant Glen's gross negligence, Steve suffered traumatic injury to his head, and additional injuries to his arms, hand, chest and leg. He later died. Craniocerebral trauma was determined as the immediate cause of his death.

27. That damage and injury was a proximate result of being jerked off his feet and landing on the ride conveyor belts and then becoming wedged between a boat ride and the Raging River's abutting concrete sidewall by continuous action of the ride conveyor belts, which were left on and operational after Steve was knocked down onto the operating ride belts. All of those actions and/or failures to act were caused by Defendant Glen, as previously alleged.
28. As a proximate result of the grossly negligent actions and omissions of Defendant Glen, evidencing extremely careless, reckless, wanton and willful disregard for Steve's rights and safety as described herein, Steve died at Mercy on June 11, 2016.
29. Defendant Glen is liable to the Plaintiff Estate and Gladys, individually, for the following injury, damage and loss:
- a. Steve's loss of future earning capacity;
 - b. Steve's physical and mental pain and suffering;
 - c. Steve's wife Gladys' loss of spousal consortium both before and after Steve died;
 - d. Steve's children, Doug and Michele's loss of parental consortium as a result of the loss of their father;
 - e. Interest on Steve's reasonable burial expense; and,
 - f. Punitive damages.
30. The compensatory and punitive damages sought by the Plaintiff Estate and Gladys, individually, are in excess of the jurisdictional minimums of this court.

WHEREFORE, the Plaintiff Estate and Plaintiff Gladys, individually, pray for judgment against the Defendant Glen for injury and loss to them as outlined herein, including recovery of both compensatory and punitive damages in amounts as may be found proper and just under the facts and circumstances of this case as determined by the jury. The Plaintiff Estate and Gladys, individually, further pray for interest and costs as allowed by Iowa law; and for such other and further relief to which they are entitled.

JURY DEMAND

The Plaintiff Estate and Gladys, individually, hereby request trial by jury of all facts so triable herein.

Dated: March 10, 2017

**WASKER, DORR, WIMMER & MARCOUILLER,
P.C.**

/s/ Fred L. Dorr

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fdorr@wdwm.net

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GALLIGAN & REID, P.C.

/s/ Brian P. Galligan

Brian P. Galligan AT0002632

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Phone: (515) 282-3333 Fax: (515) 282-0318

TRIAL LAWYERS FOR JUSTICE

/s/ Nick C. Rowley

Nick C. Rowley

AT0009516

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Decorah, Iowa 52101

Phone: (888) 811-0844 Fax: (888) 801-3616

**ATTORNEYS FOR PLAINTIFF ESTATE OF
STEPHEN PAUL BOOHER; GLADYS F. BOOHER,
ADMINISTRATOR; AND GLADYS F. BOOHER,
INDIVIDUALLY**

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ESTATE OF STEPHEN PAUL BOOHER;)	
GLADYS F. BOOHER, Administrator,)	
AND GLADYS F. BOOHER, Individually,	)	Case No. LACL137365
)	
Plaintiffs,	)	AFFIDAVIT OF COMPLIANCE
)	
vs.)	
)	
STUART R. GLEN,)	
Defendant.)	

STATE OF IOWA)
)ss.
COUNTY OF POLK)

I, Fred L. Dorr, a practicing attorney in the City of West Des Moines, Iowa, depose and state:

1. That the Petition And Jury Demand in the above entitled cause of action was filed in the Iowa District Court for Polk County, Iowa, on the 10th day of March, 2017.
2. That duplicate copies of said petition and original notice directed to the defendant were filed with the Secretary of State of the State of Iowa, on the 10th day of March, 2017, together with the filing fee.
3. That notification of such filing with the Secretary of State along with copies of the subject Original Notice, Petition And Jury Demand, were mailed to the defendant by certified mail within ten (10) days after such filing with the Secretary of State's office. A copy of that "Notice of Filing" is attached for reference.
4. That copies of the petition and original notice together with the Secretary of State's certificate of filing, all as sent by certified mail to the Defendant Stuart R. Glen on March 10, 2017, are attached hereto and by this reference made a part hereof.
5. That the information contained herein is based upon the personal knowledge and privilege of the affiant and is true and correct as I verily believe.

Dated: March 10, 2017.

**WASKER, DORR, WIMMER & MARCOUILLER,
P.C.**

/s/ Fred L. Dorr

Fred L. Dorr

AT0002105

fdorr@wdwm.net

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West Des Moines, Iowa 50266-6720

Phone: (515) 283-1801 Fax: (515) 283-1802

**ATTORNEY FOR PLAINTIFF ESTATE OF
STEPHEN PAUL BOOHER; GLADYS F. BOOHER,
ADMINISTRATOR; AND GLADYS F. BOOHER,
INDIVIDUALLY**

Subscribed and sworn to before me this 10th day of March, 2017, by Fred L. Dorr.

/s/ Lori K. Techau

Notary Public in and for the State of Iowa

My Commission Number: 783645

My Commission Expires: 04/14/17

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ESTATE OF STEPHEN PAUL BOOHER;)
GLADYS F. BOOHER, Administrator,)
AND GLADYS F. BOOHER, Individually,)

Case No. LACL137365

Plaintiffs,)

NOTICE OF FILING

VS.)

STUART R. GLEN,)

Defendant.)

2017 MAR 10 P 12:25

FILED
SECRETARY OF STATE
IOWA

TO: Stuart R. Glen
5072 Thompson Drive
The Colony, TX 75056

You will take notice that an Original Notice of suit or process against you with Petition And Jury Demand attached, copies of which are attached hereto, was duly served upon you at Des Moines, Iowa, by filing a copy of said notice or process with a Petition and Jury Demand copy attached thereto, on the 10th day of March, 2017, with the Secretary of State of the State of Iowa.

Dated at West Des Moines, Iowa this 10th day of March, 2017.

**WASKER, DORR, WIMMER & MARCOUILLER,
P.C.**

/s/ Fred L. Dorr

Fred L. Dorr

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 AND GLADYS F. BOOHER, Individually,)

Plaintiffs,)

vs.)

STUART R. GLEN,)

Defendant.)

Case No. LACL137365

ORIGINAL NOTICE

2017 MAR 10 P 12:25

FILED
 SECRETARY OF STATE
 IOWA

TO THE ABOVE-NAMED DEFENDANT:

You are notified that a petition and jury demand has been filed in the office of the clerk of this court naming you as the defendant in this action. A copy of the petition and jury demand (and any documents filed with it) is attached to this notice. The names and addresses of the attorneys for the plaintiffs are Fred L. Dorr of the firm Wasker, Dorr, Wimmer & Marcouiller, P.C., 4201 Westown Parkway, Suite 250, West Des Moines, IA 50266-6720; Phone: (515) 283-1801; Fax: (515) 283-1802; Brian P. Galligan of the firm Galligan & Reid, P.C., 300 Walnut Street, Suite 5, Des Moines, IA 50309; Phone: (515) 282-3333; Fax (515) 282-0318; and Nick C. Rowley of the firm of Trial Lawyers For Justice, 421 W. Water Street, Decorah, IA 52101, Phone: (888) 811-0844; Fax: (888) 801-3616.

You are further notified that the above case has been filed in a county that utilizes electronic filing. You must serve a motion or answer within 60 days following the filing of this notice with the secretary of state of the State of Iowa, and, within a reasonable time thereafter, file your motion or answer, in the Iowa District Court for Polk County, at the courthouse in Des Moines, Iowa. If you do not, judgment by default will be rendered against you for the relief demanded in the petition. Please see Iowa Court Rules Chapter 16 for information on electronic filing and Iowa Court Rules Chapter 16, division VI regarding the protection of personal information in court filings.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at (515) 286-3394. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942)

IMPORTANT: YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE TO PROTECT YOUR INTERESTS

STATE OF IOWA JUDICIARY

Case No. LACL137365

County Polk

Case Title ESTATE OF STEPHEN PAUL BOOHER ET AL VS STUART GLEN

THIS CASE HAS BEEN FILED IN A COUNTY THAT USES ELECTRONIC FILING.
Therefore, unless the attached Petition and Original Notice contains a hearing date for your appearance, or unless you obtain an exemption from the court, you must file your Appearance and Answer electronically.

You must register through the Iowa Judicial Branch website at <http://www.iowacourts.state.ia.us/Efile> and obtain a log in and password for the purposes of filing and viewing documents on your case and of receiving service and notices from the court.

FOR GENERAL RULES AND INFORMATION ON ELECTRONIC FILING, REFER TO THE IOWA COURT RULES CHAPTER 16 PERTAINING TO THE USE OF THE ELECTRONIC DOCUMENT MANAGEMENT SYSTEM:
<http://www.iowacourts.state.ia.us/Efile>

FOR COURT RULES ON PROTECTION OF PERSONAL PRIVACY IN COURT FILINGS, REFER TO DIVISION VI OF IOWA COURT RULES CHAPTER 16: <http://www.iowacourts.state.ia.us/Efile>

Scheduled Hearing:

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at (515) 286-3394 . (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.)

Date Issued 03/10/2017 11:29:13 AM



District Clerk of Polk

County

/s/ Jennifer Ewers

FILED
SECRETARY OF STATE
IOWA
2017 MAR 10 P 12:25

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ESTATE OF STEPHEN PAUL BOOHER;)
GLADYS F. BOOHER, Administrator,)
AND GLADYS F. BOOHER, Individually,)

Plaintiffs,)

vs.)

STUART R. GLEN,)
Defendant.)

Case No. LACL137365

**PETITION
and
JURY DEMAND**

2017 MAR 10 P 12:25

FILED
SECRETARY OF STATE
IOWA

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1. Plaintiff Gladys is an individual who resides in Sioux Falls, South Dakota. She brings this suit on behalf of the Estate of Stephen Paul Booher (“**Steve**” or “**Estate**”) and in her individual capacity.
2. Gladys and Steve were married on December 21, 1968, and continued in that martial relationship until Steve’s death on June 11, 2016, or some forty-seven (47) years.
3. Plaintiff Gladys and Steve have two adult children, Douglas Booher (“**Doug**”) and Michele Booher (“**Michele**”) who were 42 and 45 years old, respectively, at the time of their father’s death. Both Doug and Michele are married.

4. Defendant Glen is an individual whose current residence is [REDACTED]
[REDACTED] He was employed at all material times herein by Adventure Lands of America, Inc. (“**Adventureland**” or the ‘**Park**’), an Iowa corporation located in Altoona, Polk County, Iowa while residing in this state.
5. On June 7, 2016 while so employed by Adventureland, Glen was performing services as a ride operator on the “Raging River” ride (“**Ride**” or “**Raging River**”). On that same day, Steve, a co-employee of Glen was injured at Adventureland and later died.
6. The decedent, Steve, was hired as a seasonal employee of Adventureland starting May 7, 2016, with his first day of work being only a few days prior to his injury and later death.
7. At the time Steve was injured while working at Adventureland he was serving as a loading assistant on the Raging River ride.
8. He and his wife Gladys were residing in their RV (recreational vehicle) parked at the Adventureland Campground in Altoona, Polk County, Iowa, at all material times herein.

NATURE OF SUIT

9. This is an action for damages instituted by the Estate of Stephen Paul Booher, with Steve’s wife, Gladys, being authorized in the estate proceeding, as Administrator, to initiate this action on behalf of the estate. That estate proceeding is identified in Polk County, Iowa District Court as Probate No. ESPR071161. Gladys also brings this suit in her individual capacity.

10. This proceeding is furthermore brought on behalf of the estate for the wrongful death of Steve seeking recovery of all loss and damage for those persons or that entity so entitled, occasioned by Steve's death.
11. Gladys is pursuing her pre-death lost consortium claim associated with her husband Steve's death, in her individual capacity.

VENUE

12. Venue is proper here as the estate and Gladys, individually, are making their wrongful death claims arising out of circumstances and events which occurred in this county.
13. The Plaintiff estate has a property interest capable of protection and assertion in Polk County, Iowa.

FACTS

14. The afternoon of June 7, 2016 Defendant Glen was the ride operator of the Raging River at Adventureland, while decedent, Stephen Paul Booher and Gary Reed ("Reed") served as two loading assistants helping Park patrons on and off that Ride.
15. Defendant Glen, prior to the events resulting in the death of Steve, had been trained and instructed by the Park to do all of the following as a ride operator of the Raging River ride:
 - a. Visually check the ride before starting the ride;
 - b. Watch the ride during the entire operation;
 - c. Always be on guard;
 - d. Keep your eyes on the ride while the ride is operating;
 - e. Know your role in handling an accident; be prepared to act professionally;
 - f. Consider all injuries as serious;
 - g. Stop the ride if an accident occurs while the ride is in motion;
 - h. Once the area is clear and boats are ready to dispatch say "clear" over the PA system and wait for the thumbs-up signal from both loading assistants;

- i. Once you have both thumbs-up then press the “start” button for conveyor 6 to launch boat into water. Note: The “clear” signal lets both the guests and the assistants know that the boats are about to move. Check to make sure that all guests are seated in next boat and press the “start” button for “conveyor 5” to advance boat “conveyor 6”. Check to make sure that all guests are loaded and seated and that the assistants are not standing on boat, then press the “start” button for “conveyor 4” to advance boat to “conveyor 5”. Check to make sure that all guests are seated in the next boat and press the “start” button for “conveyor 3” to advance boat to “conveyor 4”. Check to make sure that all guests are seated in the boats on “conveyor “2” and press the “start” button for “conveyor 2” to advance boats. Repeat process.
 - j. The “Auxiliary Emergency Stop” button will shut off all conveyors. The “Emergency Stop” button will shut off all conveyors.
 - k. In case of emergencies, press the “Auxiliary Emergency Stop” and the “Emergency Stop” and call the operator immediately.
16. In addition, the ride operator’s control board has the following language prominently displayed on its face: “Operators: You must have thumbs up from the assistants before moving any boats.”
17. Despite the foregoing training and admonitions, Glen failed to act to avoid injury and death to Steve and resulting loss to his estate and family.

DEFENDANT GLEN’S GROSS NEGLIGENCE

18. On June 7, 2016, the date of the incident which caused the Plaintiff Estate’s and Gladys’ individual injuries, Defendant Glen was acting in the course and scope of his employment at Adventureland as was Steve, his co-employee.
19. Furthermore, at the time of the incident which is the subject of this suit, Defendant Glen acted in a grossly negligent manner towards Steve, as follows:
- a. He failed to visually check the Raging River ride before starting it;
 - b. He failed to watch the ride during its entire operation;
 - c. He failed to be on guard;

- d. He failed to know his role in handling the incident involving Steve;
- e. He failed to stop the ride once he became aware of the incident involving Steve and Reed, the loading assistants, which had knocked them both off their feet due to his reckless, unexpected, wanton and premature ride start;
- f. He failed to assure himself that ride loading assistants were not standing on any boat, pre-start;
- g. He started the ride without first obtaining the required thumbs-up signal from Steve and Reed;
- h. He failed to follow the instructions prominently displayed on the ride control board located directly in front of him which warned him to first obtain a thumbs-up from loading assistant before moving any boats;
- i. He left the operator's station within clear visual range of the fallen loading assistants, without shutting down the ride;
- j. He failed to engage the oversized, red "E-Stop Aux." knob located immediately in front of him, after he was aware both loading assistants were down and the ride was still running;
- k. He failed to key the ride to the "off" position after becoming aware that the loading assistants had been jerked off their feet due to his premature start of the ride, allowing the ride to continue operating;
- l. From his operator's platform above and in close proximity to the ride and the loading assistants, he could easily observe that Steve had been knocked down onto the moving ride belts and was being pulled by continuous belt action into the confluence of a ride boat and the abutting Raging River concrete sidewall where Steve's head and body were brought into continuous and repeated contact with that sidewall, yet failed to stop the ride and instead, left his station;
- m. Defendant Glen only returned to his operator's station and stopped the ride after several ride patrons, waiting to board, repeatedly yelled at him to "stop the ride";
- n. Glen admitted that he caused the assistants to topple onto the exposed ride conveyor belts; and,
- o. Glen failed to consider Steve's injury, once he was knocked down onto the ride conveyor belts, as serious, and treat it accordingly.

20. Steve was taken by ambulance to Mercy Medical Center (Main) ("Mercy") in Des

Moines, Iowa where he was admitted on June 7, 2016 at 5:52 p.m.

21. Steve remained at Mercy until his death on June 11, 2016 at approximately 4:53 p.m.

22. Steve's immediate cause of death was determined on June 15, 2016, by Dr. Gregory A. Schmunk, the Polk County Iowa Chief Medical Examiner, as craniocerebral trauma (i.e., trauma to the skull and brain). A State of Iowa "Certificate of Death" was issued evidencing Dr. Schmunk's cause of death determination.
23. Defendant Glen's conduct constitutes a reckless and wanton disregard for the rights of Steve, as a co-employee, and/or was the result of conscious indifference to the rights, welfare and safety of Steve, a fellow employee. Accordingly, Defendant Glen was grossly negligent.
24. Defendant Glenn's gross negligence was a proximate cause of the death of Steve and the Plaintiff Estate's and Gladys' individual damages.
25. Defendant Glen's gross negligence constituted a willful and wanton disregard of the rights, welfare and safety of Steve, causing actual damage to him, his wife, Gladys, and his estate. The Plaintiff Estate and Gladys, individually, are therefore entitled to recover punitive damages from Defendant Glen.

DAMAGES TO DECEDENT/ESTATE

26. As a direct and proximate result of Defendant Glen's gross negligence, Steve suffered traumatic injury to his head, and additional injuries to his arms, hand, chest and leg. He later died. Craniocerebral trauma was determined as the immediate cause of his death.

27. That damage and injury was a proximate result of being jerked off his feet and landing on the ride conveyor belts and then becoming wedged between a boat ride and the Raging River's abutting concrete sidewall by continuous action of the ride conveyor belts, which were left on and operational after Steve was knocked down onto the operating ride belts. All of those actions and/or failures to act were caused by Defendant Glen, as previously alleged.
28. As a proximate result of the grossly negligent actions and omissions of Defendant Glen, evidencing extremely careless, reckless, wanton and willful disregard for Steve's rights and safety as described herein, Steve died at Mercy on June 11, 2016.
29. Defendant Glen is liable to the Plaintiff Estate and Gladys, individually, for the following injury, damage and loss:
- a. Steve's loss of future earning capacity;
 - b. Steve's physical and mental pain and suffering;
 - c. Steve's wife Gladys' loss of spousal consortium both before and after Steve died;
 - d. Steve's children, Doug and Michele's loss of parental consortium as a result of the loss of their father;
 - e. Interest on Steve's reasonable burial expense; and,
 - f. Punitive damages.
30. The compensatory and punitive damages sought by the Plaintiff Estate and Gladys, individually, are in excess of the jurisdictional minimums of this court.

WHEREFORE, the Plaintiff Estate and Plaintiff Gladys, individually, pray for judgment against the Defendant Glen for injury and loss to them as outlined herein, including recovery of both compensatory and punitive damages in amounts as may be found proper and just under the facts and circumstances of this case as determined by the jury. The Plaintiff Estate and Gladys, individually, further pray for interest and costs as allowed by Iowa law; and for such other and further relief to which they are entitled.

JURY DEMAND

The Plaintiff Estate and Gladys, individually, hereby request trial by jury of all facts so triable herein.

Dated: March 10, 2017

**WASKER, DORR, WIMMER & MARCOUILLER,
P.C.**

/s/ Fred L. Dorr

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/s/ Brian P. Galligan

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FILED
SECRETARY OF STATE
IOWA
2017 MAR 10 P 12:25

TRIAL LAWYERS FOR JUSTICE

/s/ Nick C. Rowley

Nick C. Rowley

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nick@tl4j.com

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Decorah, Iowa 52101

Phone: (888) 811-0844 Fax: (888) 801-3616

**ATTORNEYS FOR PLAINTIFF ESTATE OF
STEPHEN PAUL BOOHER; GLADYS F. BOOHER,
ADMINISTRATOR; AND GLADYS F. BOOHER,
INDIVIDUALLY**

IOWA

SECRETARY OF STATE

ESTATE OF STEPHEN PAUL BOOHER; GLADYS F. BOOHER,
Administrator, AND GLADYS F. BOOHER, Individually

plaintiff(s)

vs.

STUART R. GLEN

defendant(s)

I, PAUL D. PATE, Secretary of State of the State of Iowa, do hereby
certify that the attached Original Notice, Petition and Jury Demand were
received and filed in the office of the Secretary of State at 12:25 pm,
March 10, 2017.



PAUL D. PATE SECRETARY OF STATE

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ESTATE OF STEPHEN PAUL BOOHER;)
GLADYS F. BOOHER, Administrator,)
AND GLADYS F. BOOHER, Individually,)

Case No. LACL137365

Plaintiffs,)

ORIGINAL NOTICE

vs.)

STUART R. GLEN,)

Defendant.)

TO THE ABOVE-NAMED DEFENDANT:

You are notified that a petition and jury demand has been filed in the office of the clerk of this court naming you as the defendant in this action. A copy of the petition and jury demand (and any documents filed with it) is attached to this notice. The names and addresses of the attorneys for the plaintiffs are Fred L. Dorr of the firm Wasker, Dorr, Wimmer & Marcouiller, P.C., 4201 Westown Parkway, Suite 250, West Des Moines, IA 50266-6720; Phone: (515) 283-1801; Fax: (515) 283-1802; Brian P. Galligan of the firm Galligan & Reid, P.C., 300 Walnut Street, Suite 5, Des Moines, IA 50309; Phone: (515) 282-3333; Fax (515) 282-0318; and Nick C. Rowley of the firm of Trial Lawyers For Justice, 421 W. Water Street, Decorah, IA 52101, Phone: (888) 811-0844; Fax: (888) 801-3616.

You are further notified that the above case has been filed in a county that utilizes electronic filing. You must serve a motion or answer within 60 days following the filing of this notice with the secretary of state of the State of Iowa, and, within a reasonable time thereafter, file your motion or answer, in the Iowa District Court for Polk County, at the courthouse in Des Moines, Iowa. If you do not, judgment by default will be rendered against you for the relief demanded in the petition. Please see Iowa Court Rules Chapter 16 for information on electronic filing and Iowa Court Rules Chapter 16, division VI regarding the protection of personal information in court filings.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at (515) 286-3394. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942)

IMPORTANT: YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE TO PROTECT YOUR INTERESTS

STATE OF IOWA JUDICIARY

Case No. LACL137365

County Polk

Case Title ESTATE OF STEPHEN PAUL BOOHER ET AL VS STUART GLEN

THIS CASE HAS BEEN FILED IN A COUNTY THAT USES ELECTRONIC FILING.

Therefore, unless the attached Petition and Original Notice contains a hearing date for your appearance, or unless you obtain an exemption from the court, you must file your Appearance and Answer electronically.

You must register through the Iowa Judicial Branch website at <http://www.iowacourts.state.ia.us/Efile> and obtain a log in and password for the purposes of filing and viewing documents on your case and of receiving service and notices from the court.

FOR GENERAL RULES AND INFORMATION ON ELECTRONIC FILING, REFER TO THE IOWA COURT RULES CHAPTER 16 PERTAINING TO THE USE OF THE ELECTRONIC DOCUMENT MANAGEMENT SYSTEM:
<http://www.iowacourts.state.ia.us/Efile>

FOR COURT RULES ON PROTECTION OF PERSONAL PRIVACY IN COURT FILINGS, REFER TO DIVISION VI OF IOWA COURT RULES CHAPTER 16: <http://www.iowacourts.state.ia.us/Efile>

Scheduled Hearing:

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at (515) 286-3394 . (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.)

Date Issued 03/10/2017 11:29:13 AM



District Clerk of Polk

County

/s/ Jennifer Ewers

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ESTATE OF STEPHEN PAUL BOOHER;)	
GLADYS F. BOOHER, Administrator,)	
AND GLADYS F. BOOHER, Individually,	)	Case No. <u>LACL137365</u>
)	
Plaintiffs,	)	PETITION
	)	and
vs.	)	JURY DEMAND
)	
STUART R. GLEN,)	
Defendant.)	

COMES NOW Gladys F. Booher (“**Gladys**”) in her capacity as Administrator in the above-captioned case and individually, and for her petition naming Stuart R. Glen (“**Glen**”) as Defendant, states:

PARTIES

1. Plaintiff Gladys is an individual who resides in Sioux Falls, South Dakota. She brings this suit on behalf of the Estate of Stephen Paul Booher (“**Steve**” or “**Estate**”) and in her individual capacity.
2. Gladys and Steve were married on December 21, 1968, and continued in that martial relationship until Steve’s death on June 11, 2016, or some forty-seven (47) years.
3. Plaintiff Gladys and Steve have two adult children, Douglas Booher (“**Doug**”) and Michele Booher (“**Michele**”) who were 42 and 45 years old, respectively, at the time of their father’s death. Both Doug and Michele are married.

4. Defendant Glen is an individual whose current residence is [REDACTED]
[REDACTED] He was employed at all material times herein by Adventure Lands of America, Inc. ("**Adventureland**" or the '**Park**'), an Iowa corporation located in Altoona, Polk County, Iowa while residing in this state.
5. On June 7, 2016 while so employed by Adventureland, Glen was performing services as a ride operator on the "Raging River" ride ("**Ride**" or "**Raging River**"). On that same day, Steve, a co-employee of Glen was injured at Adventureland and later died.
6. The decedent, Steve, was hired as a seasonal employee of Adventureland starting May 7, 2016, with his first day of work being only a few days prior to his injury and later death.
7. At the time Steve was injured while working at Adventureland he was serving as a loading assistant on the Raging River ride.
8. He and his wife Gladys were residing in their RV (recreational vehicle) parked at the Adventureland Campground in Altoona, Polk County, Iowa, at all material times herein.

NATURE OF SUIT

9. This is an action for damages instituted by the Estate of Stephen Paul Booher, with Steve's wife, Gladys, being authorized in the estate proceeding, as Administrator, to initiate this action on behalf of the estate. That estate proceeding is identified in Polk County, Iowa District Court as Probate No. ESPR071161. Gladys also brings this suit in her individual capacity.

10. This proceeding is furthermore brought on behalf of the estate for the wrongful death of Steve seeking recovery of all loss and damage for those persons or that entity so entitled, occasioned by Steve's death.
11. Gladys is pursuing her pre-death lost consortium claim associated with her husband Steve's death, in her individual capacity.

VENUE

12. Venue is proper here as the estate and Gladys, individually, are making their wrongful death claims arising out of circumstances and events which occurred in this county.
13. The Plaintiff estate has a property interest capable of protection and assertion in Polk County, Iowa.

FACTS

14. The afternoon of June 7, 2016 Defendant Glen was the ride operator of the Raging River at Adventureland, while decedent, Stephen Paul Booher and Gary Reed ("Reed") served as two loading assistants helping Park patrons on and off that Ride.
15. Defendant Glen, prior to the events resulting in the death of Steve, had been trained and instructed by the Park to do all of the following as a ride operator of the Raging River ride:
- a. Visually check the ride before starting the ride;
 - b. Watch the ride during the entire operation;
 - c. Always be on guard;
 - d. Keep your eyes on the ride while the ride is operating;
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 - h. Once the area is clear and boats are ready to dispatch say "clear" over the PA system and wait for the thumbs-up signal from both loading assistants;

- i. Once you have both thumbs-up then press the “start” button for conveyor 6 to launch boat into water. Note: The “clear” signal lets both the guests and the assistants know that the boats are about to move. Check to make sure that all guests are seated in next boat and press the “start” button for “conveyor 5” to advance boat “conveyor 6”. Check to make sure that all guests are loaded and seated and that the assistants are not standing on boat, then press the “start” button for “conveyor 4” to advance boat to “conveyor 5”. Check to make sure that all guests are seated in the next boat and press the “start” button for “conveyor 3” to advance boat to “conveyor 4”. Check to make sure that all guests are seated in the boats on “conveyor “2” and press the “start” button for “conveyor 2” to advance boats. Repeat process.
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16. In addition, the ride operator’s control board has the following language prominently displayed on its face: “Operators: You must have thumbs up from the assistants before moving any boats.”

17. Despite the foregoing training and admonitions, Glen failed to act to avoid injury and death to Steve and resulting loss to his estate and family.

DEFENDANT GLEN’S GROSS NEGLIGENCE

18. On June 7, 2016, the date of the incident which caused the Plaintiff Estate’s and Gladys’ individual injuries, Defendant Glen was acting in the course and scope of his employment at Adventureland as was Steve, his co-employee.

19. Furthermore, at the time of the incident which is the subject of this suit, Defendant Glen acted in a grossly negligent manner towards Steve, as follows:

- a. He failed to visually check the Raging River ride before starting it;
- b. He failed to watch the ride during its entire operation;
- c. He failed to be on guard;

- d. He failed to know his role in handling the incident involving Steve;
- e. He failed to stop the ride once he became aware of the incident involving Steve and Reed, the loading assistants, which had knocked them both off their feet due to his reckless, unexpected, wanton and premature ride start;
- f. He failed to assure himself that ride loading assistants were not standing on any boat, pre-start;
- g. He started the ride without first obtaining the required thumbs-up signal from Steve and Reed;
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- k. He failed to key the ride to the "off" position after becoming aware that the loading assistants had been jerked off their feet due to his premature start of the ride, allowing the ride to continue operating;
- l. From his operator's platform above and in close proximity to the ride and the loading assistants, he could easily observe that Steve had been knocked down onto the moving ride belts and was being pulled by continuous belt action into the confluence of a ride boat and the abutting Raging River concrete sidewall where Steve's head and body were brought into continuous and repeated contact with that sidewall, yet failed to stop the ride and instead, left his station;
- m. Defendant Glen only returned to his operator's station and stopped the ride after several ride patrons, waiting to board, repeatedly yelled at him to "stop the ride";
- n. Glen admitted that he caused the assistants to topple onto the exposed ride conveyor belts; and,
- o. Glen failed to consider Steve's injury, once he was knocked down onto the ride conveyor belts, as serious, and treat it accordingly.

20. Steve was taken by ambulance to Mercy Medical Center (Main) ("**Mercy**") in Des

Moines, Iowa where he was admitted on June 7, 2016 at 5:52 p.m.

21. Steve remained at Mercy until his death on June 11, 2016 at approximately 4:53 p.m.

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24. Defendant Glenn's gross negligence was a proximate cause of the death of Steve and the Plaintiff Estate's and Gladys' individual damages.
25. Defendant Glen's gross negligence constituted a willful and wanton disregard of the rights, welfare and safety of Steve, causing actual damage to him, his wife, Gladys, and his estate. The Plaintiff Estate and Gladys, individually, are therefore entitled to recover punitive damages from Defendant Glen.

DAMAGES TO DECEDENT/ESTATE

26. As a direct and proximate result of Defendant Glen's gross negligence, Steve suffered traumatic injury to his head, and additional injuries to his arms, hand, chest and leg. He later died. Craniocerebral trauma was determined as the immediate cause of his death.

27. That damage and injury was a proximate result of being jerked off his feet and landing on the ride conveyor belts and then becoming wedged between a boat ride and the Raging River's abutting concrete sidewall by continuous action of the ride conveyor belts, which were left on and operational after Steve was knocked down onto the operating ride belts. All of those actions and/or failures to act were caused by Defendant Glen, as previously alleged.
28. As a proximate result of the grossly negligent actions and omissions of Defendant Glen, evidencing extremely careless, reckless, wanton and willful disregard for Steve's rights and safety as described herein, Steve died at Mercy on June 11, 2016.
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- a. Steve's loss of future earning capacity;
 - b. Steve's physical and mental pain and suffering;
 - c. Steve's wife Gladys' loss of spousal consortium both before and after Steve died;
 - d. Steve's children, Doug and Michele's loss of parental consortium as a result of the loss of their father;
 - e. Interest on Steve's reasonable burial expense; and,
 - f. Punitive damages.
30. The compensatory and punitive damages sought by the Plaintiff Estate and Gladys, individually, are in excess of the jurisdictional minimums of this court.

WHEREFORE, the Plaintiff Estate and Plaintiff Gladys, individually, pray for judgment against the Defendant Glen for injury and loss to them as outlined herein, including recovery of both compensatory and punitive damages in amounts as may be found proper and just under the facts and circumstances of this case as determined by the jury. The Plaintiff Estate and Gladys, individually, further pray for interest and costs as allowed by Iowa law; and for such other and further relief to which they are entitled.

JURY DEMAND

The Plaintiff Estate and Gladys, individually, hereby request trial by jury of all facts so triable herein.

Dated: March 10, 2017

**WASKER, DORR, WIMMER & MARCOUILLER,
P.C.**

/s/ Fred L. Dorr

Fred L. Dorr

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GALLIGAN & REID, P.C.

/s/ Brian P. Galligan

Brian P. Galligan

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Phone: (515) 282-3333 Fax: (515) 282-0318

TRIAL LAWYERS FOR JUSTICE

/s/ Nick C. Rowley

Nick C. Rowley

AT0009516

nick@tl4j.com

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Decorah, Iowa 52101

Phone: (888) 811-0844 Fax: (888) 801-3616

**ATTORNEYS FOR PLAINTIFF ESTATE OF
STEPHEN PAUL BOOHER; GLADYS F. BOOHER,
ADMINISTRATOR; AND GLADYS F. BOOHER,
INDIVIDUALLY**



IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ESTATE OF STEPHEN PAUL BOOHER;)	
GLADYS F. BOOHER, Administrator,)	
AND GLADYS F. BOOHER, Individually,	)	Case No. LACL137365
)	
Plaintiffs,	)	AFFIDAVIT OF MAILING
)	
vs.)	
)	
STUART R. GLEN,)	
Defendant.)	

AFFIDAVIT

STATE OF IOWA)
)ss.
COUNTY OF POLK)

On this 20th day of March 2017, the undersigned, after being first duly sworn on oath, deposes and states as follows:

1. That I am one of the attorneys presently representing the Plaintiffs in the above-captioned matter.
2. That attached to this Affidavit is a copy of a Certified Mailing Return Receipt which shows delivery of the following documents, by certified mail, to the home of [REDACTED] on March 15, 2017:
 - A “Notice of Filing” with an Original Notice as well as a Petition And Jury Demand attached all naming Stuart R. Glen as the Defendant and bearing the Iowa Secretary of State’s stamp acknowledging the filing of the same documents with that office on March 10, 2017, at 12:25 p.m.;
 - A copy of the Iowa Secretary of State’s certificate of filing which confirms that the Original Notice, Petition And Jury Demand filed in Polk County Iowa District Court Case No. LACL137365, naming Stuart R. Glen Defendant, were received and filed in the office of the Secretary of State at 12:25 p.m. on March 10, 2017; and,
 - Duplicate copies of the same Petition And Jury Demand and Original Notice as e-filed on March 10, 2017, at 11:04 a.m. with the Polk County Iowa Clerk of District Court.

EXHIBIT C

3. The purpose of this Affidavit is to confirm that mailing, its receipt, and compliance with Iowa law.

FURTHER AFFIANT SAYETH NOT.

Dated: March 20, 2017.

**WASKER, DORR, WIMMER & MARCOUILLER,
P.C.**

/s/ Fred L. Dorr

Fred L. Dorr

AT0002105

fdorr@wdwm.net

4201 Westown Parkway, Suite 250

West Des Moines, Iowa 50266-6720

Phone: (515) 283-1801 Fax: (515) 283-1802

**ATTORNEY FOR PLAINTIFF ESTATE OF
STEPHEN PAUL BOOHER; GLADYS F. BOOHER,
ADMINISTRATOR; AND GLADYS F. BOOHER,
INDIVIDUALLY**

Subscribed and sworn to before me this 20th day of March 2017, by Fred L. Dorr.

/s/ Lori K. Techau

Notary Public in and for the State of Iowa

My Commission Number: 783645

My Commission Expires: 04/14/17

Copy to:

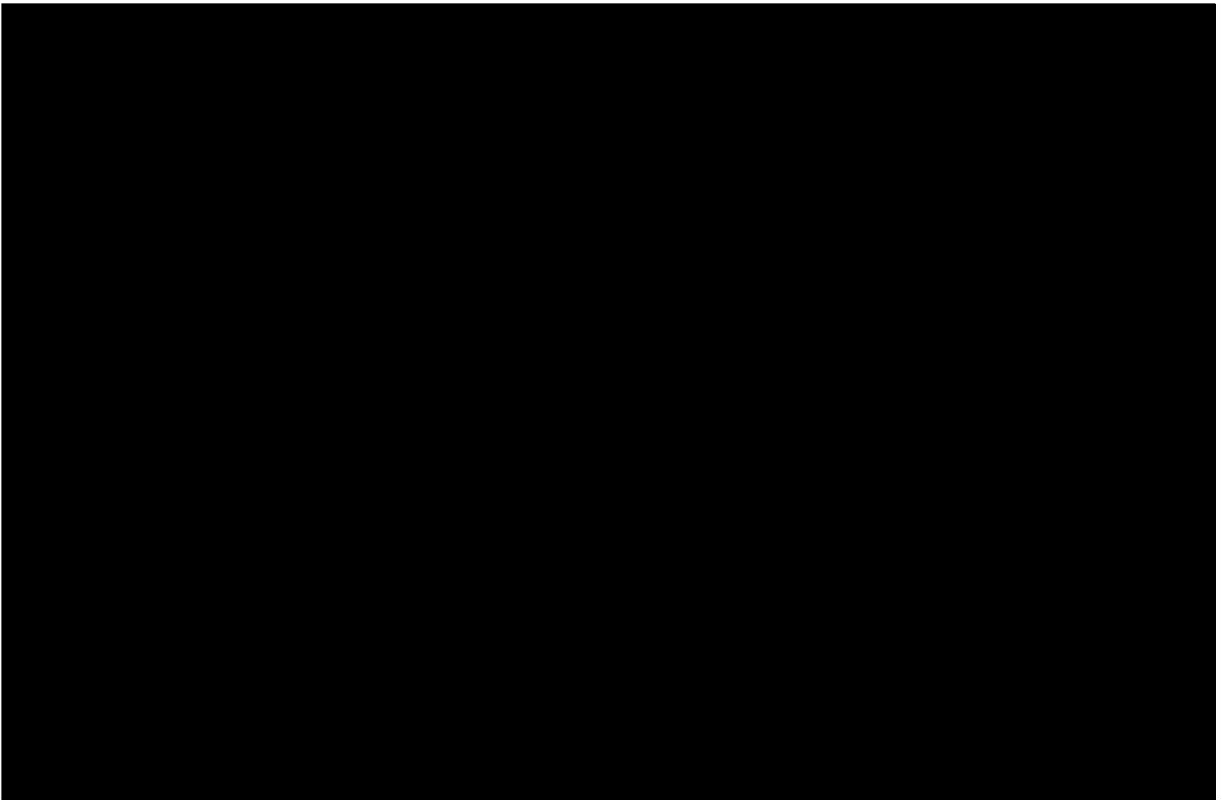
Guy R. Cook
Attorney at Law
Grefe & Sidney, P.L.C.
500 E. Court Ave.
Des Moines, IA 50309
ATTORNEY FOR DEFENDANT

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of foregoing instrument was filed electronically with the Clerk of Court through the electronic filing system, and was also e-mailed and mailed to the Defendant's attorney listed on March 20, 2017

By **X- Mail**

Signature: /s/ Lori K. Techau



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ESTATE OF STEPHEN PAUL BOOHER;
GLADYS F. BOOHER, Administrator; and
GLADYS F. BOOHER, Individually,

Plaintiffs,

v.

STUART R. GLEN,

Defendant.

Case No. 4:17-cv-119

(Polk County No. LACL137365)

**LOCAL RULE 81.1 REMOVAL
STATEMENT**

COMES NOW Defendant Stuart R. Glen (“Glen”), pursuant to LR 81.1, and submits the following information:

1. Copies of all process, pleadings, and orders filed in the state case:

Petition and Jury Demand; Affidavit of Compliance, including, Notice of Filing, Secretary of State Service Notice, and Certified Mail Return Receipt Green Card; and, Affidavit of Mail, including Certified Mail Return Receipt are attached as Exhibits A-C.

2. All matters pending in the state court that will require resolution by this Court:

None, other than the claims alleged in Plaintiffs’ state court Petition.

3. Names of counsel and the law firms that have appeared in the state court, with their office address, telephone numbers, facsimile numbers, and e-mail addresses (if available), and the names of the parties they represent.

**Fred L. Dorr, Wasker, Dorr, Wimmer & Marcouiller, P.C., 4201 Westown
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Walnut Street, Suite 5, Des Moines, Iowa 50309, Telephone: (515) 282-3333, Fax: (515) 282-0318, E-mail: bgalligan@galliganlaw.com; and Nick C. Rowley, Trial Lawyers for Justice, 421 West Water Street, Decorah, Iowa 52101, Telephone: (888) 811-0844, Fax: (888) 801-3613, E-mail: nick@tl4j.com, represent Plaintiffs Estate Of Stephen Paul Booher; Gladys F. Booher, Administrator, and Gladys F. Booher, Individually.

Respectfully submitted,

Certificate of Service

The undersigned certifies that the foregoing instrument was served upon the parties to this action by serving a copy upon each of the attorneys listed as receiving notice on April 3, 2017 by CM/ECF.

/s/ Adam D. Zenor

Copies to:

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GREFE & SIDNEY, P.L.C.

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